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OVERSIGHT OF FEDERAL PROCUREMENT DECISIONS ON WEDTECH

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
OVERSIGHT OF GOVERNMENT MANAGEMENT

OF THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

Part 1

ROLE OF THE SMALL BUSINESS ADMINISTRATION

SEPTEMBER 9, 10, 1987

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OVERSIGHT OF FEDERAL PROCUREMENT DECISIONS ON WEDTECH

WEDNESDAY, SEPTEMBER 9, 1987

U.S. Senate,
Subcommittee on Oversight
of Government Management,
Committee on Governmental Affairs,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:30 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Carl Levin, Chairman of the Subcommittee, presiding.

Present: Senators Levin and Cohen.

Also Present: Senator Bumpers.

Staff Present: Linda J. Gustitus, Staff Director and Chief Counsel; Peter K. Levine, Counsel; Jack Mitchell, Investigator; Mary Berry Gerwin, Minority Staff Director and Chief Counsel for the Minority; Melissa W. Norton, Minority Counsel; and Frankie de Vergie, Chief Clerk.

OPENING STATEMENT OF SENATOR LEVIN

Senator Levin. Good morning everybody.

We are here today to examine the "hows" and the "whys" of a major scandal involving the Wedtech Corporation, a small machine tool company in the South Bronx that came to believe that the purchase of political influence is more important than the sale of a quality product. That political influence was bought and used not for a noble purpose—jobs for the disadvantaged—but for simple personal gain.

It appears from indictments and from first-hand accounts that over the years Wedtech found more than a few Government officials, former Government officials and friends of Government officials who were willing to use their influence for a price and who—by helping Wedtech—expected and obtained substantial personal gain.

For a time this influence peddling produced results as Federal officials reached a series of unwise and unfortunate decisions to grant more and more assistance to the company. In the end, however, those who could least afford it paid the price. While millions of dollars were bled from company funds to line the pockets of company insiders and well-placed "consultants," American taxpayers lost tens of millions of dollars, paid for products that Wedtech would never be able to deliver, and suffered a serious delay in the completion of an important element of our national defense. Small businesses and investors lost tens of millions of dollars when Wedtech failed to meet its obligations and went bankrupt. And perhaps most tragic of all, hundreds of low income employees from the South Bronx to northern Michigan lost the jobs and the hope that this Federal program had been intended to provide.

Criminal wrongdoing by Wedtech and its allies is currently under investigation by the Independent Counsel, three U.S. Attorneys, the Labor Department's Office of Racketeering and Enforcement, the SBA Inspector General, the Defense Criminal Investigative Service, and others. However, none of these criminal investigations has a mandate to examine the broader policy implications of the Wedtech scandal: What role does political influence play in the 8(a) procurement process? Does the current structure of the minority contracting program invite such influence? Does the current program invite phony transactions for obtaining minority control? Should millionaires be allowed in a program for the economically disadvantaged? Should companies with access to tens of millions of dollars of capital be eligible for participation? How can the process be changed to avoid future Wedtechs?

The Subcommittee on Oversight of Government Management with its jurisdiction over Government-wide procurement practices and Federal ethics laws has undertaken an investigation to address these questions. Over the past 8 months the Subcommittee staff has reviewed more than 100,000 pages of documents and interviewed approximately 120 individuals, including Army, Navy and SBA officials, former White House staffers, Wedtech consultants and Wedtech competitors.

The program that Wedtech officials and their associates used for the personal gain was the 8(a) Small Business Minority Set Aside program. Created as a laudable effort to encourage and support small minority-owned businesses, this program provides important business opportunities to members of our society who have long been denied such opportunity. It provides jobs, training and opportunities for advancement in areas where they are sorely needed.

When the 8(a) program works right, it can combine the talents and services of a competent small business with the Federal Government's procurement needs so that everybody benefits. In many cases, however, the 8(a) program appears to have fallen victim to political influence. We hear stories of companies that are admitted to the program and awarded contracts because of whom they know rather than what they do. Wedtech is one such example.

The fundamental purpose of the 8(a) program is to assist companies that are economically disadvantaged and at least 51 percent minority owned. The application of these fundamental principles by the SBA in the case of Wedtech offended common sense. And the Subcommittee has been made aware of other 8(a) companies which confirm that the 8(a) program standards for participation are so elastic as to be almost non-existent.

In the Wedtech example we will hear about a company which remained in the 8(a) program although: One, its officers were not only not economically disadvantaged, they were millionaires; two, the company was able to obtain multi-million dollar lines of credit from major banks in New York; three, the company raised more than $75 million worth of capital through three stock and debenture offerings while remaining in the 8(a) program; four, it was no longer minority owned and controlled; and five, its program term had expired.

The advantage conferred by the Federal Government on a company that meets the basic requirements of the 8(a) program is the sole-source award of Government contracts with no price or performance competition. That is a significant benefit. In the Wedtech case two agencies, the Army and the Navy, both at first opposed the award of such contracts to Wedtech because the contracts were very important and the company had no relevant experience and minimal facilities for performance.

It has been alleged in District Court indictments that Wedtech paid bribes to a Congressman, Federal agency officials, and employees of the New York State and City Governments. We know that Wedtech paid millions of dollars in cash, stock and stock options to dozens of well-placed political consultants, including White House political advisor Lyn Nofziger and his partner, Mark Bragg; former White House deputy counsellor Jim Jenkins; Bob Wallach, a close friend of and lawyer for the Attorney General; the law firm of Biaggi & Ehrlich; and others to help convince the Army and Navy to change their mind, and it was successful.

Wedtech achieved its goal.

It is very troubling that a company that was receiving millions of dollars of Federal assistance in a special program designed for the socially and economically disadvantaged was handing out millions to purchase political influence.

The purpose of the 8(a) program is to make small and disadvantaged businesses viable and competitive; not to line the pockets of a few privileged companies and their political allies and consultants. Equally troubling is the fact that recommendations of working-level employees in the SBA, Navy and Army were reversed at the top levels of the agencies. In some cases it may be that the agencies involved failed to follow their own procurement rules. In other cases, however, it may be that relevant statutes and regulations permitted—or at least did not specifically preclude—the unwise decisions made in favor of Wedtech.

In such cases I hope that this Subcommittee, with the assistance of our colleagues from the Small Business Committee, will be in a position to recommend appropriate statutory and regulatory changes.

The Subcommittee plans three separate segments of hearings on Wedtech. The first segment, to be held today and tomorrow, will address decisions of the Small Business Administration with regard to Wedtech's eligibility to participate in the 8(a) program. The second set of hearings will examine the Navy's award to Wedtech of $100 million contract to construct pontoon causeways. And a third set of hearings will look at the Army's award to Wedtech of a $30 million contract for small engines.

In this first segment of the hearings we will hear testimony about the SBA's decision to let Wedtech stay in the 8(a) program despite Wedtech's loss of eligibility after a public stock offering in 1983. These issues are technical, but they go to the fundamental purpose of the program—to serve companies that are minority-owned and economically disadvantaged.

The procurement decisions made by the SBA related to Wedtech raise substantial questions about the structure of the Federal 8(a) program to set aside Federal contracts for minority small businesses. For this reason we have invited the Chairman and the Ranking Minority Member of the Small Business Committee as well as members of the Small Business Subcommittee with jurisdiction over the 8(a) program to participate in these hearings if they so choose.

In the summer of 1983 Wedtech raised almost $50 million through its initial stock offering and a new line of credit. Its minority owner, John Mariotta, became an instant multimillionaire as a result of the offering. Further, the stock sale left him with just 26.7 percent of the company's stock, well below the required 51 percent minority ownership.

Instead of allowing Wedtech's fixed program term to expire, however, the SBA granted Wedtech two temporary extensions to give the company a chance to regain its eligibility. To fix the eligibility problem, the company's management structured an arrangement, which they called a sale, under which Wedtech insiders placed in escrow enough stock in the name of Mariotta to raise his holdings back to the 51 percent level, and Mariotta was given the option to purchase this stock—at his discretion, at whatever the fair market value might be, in ten annual installments starting two years from the date of the agreement.

Mariotta was given temporary voting control over the shares, but if he failed to make a payment, the stock would simply revert to the so-called sellers. It would have been as if nothing had happened. As a result of this phony transaction, Mr. Mariotta was allowed to be considered the owner of 55 percent of Wedtech stock, although the had never paid for the additional shares, was under no obligation to do so, and never received delivery of the stock.

These troubling facts were known to the SBA but agency officials nonetheless approved a 3-year extension of Wedtech's eligibility, relying on legal opinions provided by Wedtech's lawyers. Indeed, the transaction was approved at the SBA's regional level on the same day it was submitted, raising serious questions about the integrity of the process.

The SBA's willingness to bend the rules for a politically well-connected company like Wedtech raises questions about the whole program and the way it is administered: Should a firm that is owned by multi-millionaires and has access to tens of millions of dollars in capital and loans continue to receive sole-source contracts intended for disadvantaged minority businesses? Do publicly held corporations have such diminished capital and credit opportunities as required by statute and SBA regulations that they can be considered economically disadvantaged? Should such firms be excluded or graduated from the program? Does voting control of stock constitute ownership for SBA purposes, even where the minority individual has not paid for the stock, such individual is not legally obligated to pay for the stock, and the stock itself is held in escrow contingent upon purchase by the minority individual? Does the approval of this sort of arrangement invite sham transactions? Does the 8(a) program encourage firms like Wedtech to become dependent on 8(a) contracts? If so, can the program be restructured to require more balanced growth? Does the SBA have the will power and clout to make the objective decisions needed in the 8(a) program? If not, should the SBA's discretion be further limited in this regard?

The 8(a) program is an important program. Unfortunately, it appears that political influence has been applied to skew the program to favor a few companies and individuals. In light of these problems, we must examine the program to determine how best to prevent a recurrence of these problems in the future.

I look forward to the testimony of our witnesses on these and other issues as the hearings proceed. Before calling on our first witness, I am going to call upon the Ranking Member of this Subcommittee, a distinguished Senator and a good friend of mine, Senator Cohen of Maine.

OPENING STATEMENT OF SENATOR COHEN

Senator COHEN. Thank you very much, Mr. Chairman. I have a prepared statement which I will forego in view of your very, I think, complete opening statement.

I might just point out that Senator Levin and I also serve on the Senate Armed Services Committee and we have worked there for the past 9 years in conjunction with this Committee as well to try and stimulate more competition in our procurement system and it has been perhaps the singular goal of the two of us to try and accomplish that through the Competition and Contracting Act, so we favor more competition in order to produce a better product at a lower price, which is the goal that we in both parties espouse.

One of the notable exceptions is the Section 8(a) SBA program because we both recognize that there are companies and individuals in our society who are ethnically, racially handicapped, economically handicapped, and we want to give them an opportunity to compete, and so we need to have a Section 8(a) program. But I think from what I have read about this case and all the materials I have reviewed that we have seen an abuse, not only in this case in Wedtech, but throughout the Section 8(a) history; abuses by both parties and all administrations.

When you have that kind of abuse, I think we have a case where the taxpayers are cheated, workers are cheated, and in this case the men and women who serve in our military also are cheated because they are not given the products that they need to carry out their missions, in this particular case, by a firm that in my judgment was not minority owned, was not economically disadvantaged, and in fact was not competent ultimately to complete the contracts under schedule.

If I could summarize my own feelings at this point about the case, I would paraphrase John Randolph who said, "It shines and stinks like a rotten mackerel in the moonlight."

We are looking at this particular case not to try and determine criminal liability, certainly, and responsibility. We have an independent prosecutor currently conducting and investigation of the entire matter and we should take care not to prejudice the rights of any individual witness who might be called to testify before the Committee. But I think that it is used to point out that this Administration, this company is not the first to have experienced an abuse of the Section 8(a) program and what we need to do is to look to see, Mr. Chairman, what changes can be made or need to be made to make the program fulfill its intended goal. So I look forward to working with you throughout the hearings.

[Senator Cohen's prepared statement follows:]

PREPARED STATEMENT OF SENATOR COHEN

The Subcommittee on Oversight of Government Management is beginning six days of hearings to review the story of the Wedtech Corporation, a formerly obscure South Bronx company that became a multi-million dollar defense contractor, thanks to the section 8(a) minority set-aside program. It is a story that presents a complicated cast of characters, including flashy financiers and political advocates, government officials who disregarded agency regulations, and, unfortunately, hundreds of workers who lost their jobs due to the ultimate demise of the company.

While this troubled corporation is the case under study by the Subcommittee, we must keep in mind that the real focus of these hearings is the 8(a) set-aside program and what changes may be necessary to prevent another Wedtech story from taking place.

A central question that I hope these hearings will answer is whether this is a program that leaves too much discretion over important decisions—such as when to terminate a company from participation in the 8(a) program—in the hands of agency officials. Excessive discretion, with little accountability for why decisions are made, is the classic formula for abuse, and for allowing a well-intentioned program to stray from the original purpose designed by the Congress. Too much discretion also can be, unfortunately, a lightening rod for favoritism or political pressure, whether in the form of a direct plea from a particular individual to favor a company or a vague understanding within an agency that key decisions should bring about a certain result.

In the case of the 8(a) program, the costs of excessive discretion can be extremely high to the government and to the taxpayer, as well as to other contractors. It can result in companies which are not minority-owned, or no longer economically disadvantaged, receiving multi-million dollar contracts on a sole-source basis. Not only does this take away contracts from truly deserving disadvantaged firms, but also denies government contracts to other, larger companies that must play by the rules of competitive bidding. Senator Levin and I have worked closely over the years to inject the beneficial effects of competition into the federal procurement system, so that price and quality—not bias and favoritism—determine who performs government contracts. Allowing lax standards or excessive discretion to exist in set-aside programs can undermine these efforts to enhance competition, and allow companies to obtain sole-source contracts unfairly. As these hearings progress, we will have to decide whether we can improve the overall procurement process by awarding 8(a) contracts more competitively, or at least by tightening up this program so that it will not be subject to manipulation or favoritism.

Surely, Congress never intended the 8(a) program to be a "get-rich quick" scheme and we may never know the extent to which the 8(a) program has been exploited. What we do know is that while some have gained enormously from the 8(a) program, there are many who have lost. High on this list of losers are those Wedtech workers who have lost their jobs because Wedtech simply burst from overfeeding on government contracts.

I might add that this situation is sadly ironic. I expect that we will hear over the course of these hearings about a sincere wish to benefit Wedtech workers and to help create a model of how private enterprise can achieve a public good. And yet, when contradictory motives took over—whether it was greed or short-sightedness—what was left was a number of individuals who reaped hundreds of thousands of dollars at the expense of those who truly needed meaningful job training and a weekly paycheck.

Undoubtedly, neither Wedtech—nor this Administration—is the first to experience abuse of the 8(a) program. Wedtech is only the latest in a series of repeated scandals in the 8(a) program since its inception. We should also keep in mind that various aspects of the Wedtech case are under investigation by an Independent Counsel, and three U.S. Attorneys, as well as by several federal agencies. Thus, in the course of these hearings we must be careful not to prejudice any of these investigations or the rights of the individuals involved. The issues raised by the Wedtech case, however, are ones, that demand attention by the Congress to determine whether reforms are necessary to make the overall procurement process fairer and more efficient.

I look forward to working with Senator Levin and the other members of the Subcommittee, as well as with the Small Business Committee, in forging a solution to the problems that the story of Wedtech vividly illustrates.

Senator LEVIN. Thank you, Senator Cohen. Our first witness today is Mr. Martin Pollner who has had a distinguished career of public service. He served with the Justice Department under Lawrence Walsh, who is presently the Independent Counsel investigating the Iran/Contra scandal, and under Byron White, who is a sitting Justice of the United States Supreme Court.

Mr. Pollner has also served as Assistant U.S. Attorney in the Eastern District of New York. Later Mr. Pollner served as Deputy Assistant Secretary of the Treasury for Law Enforcement, and he has been U.S. Representative to the International Narcotics Control Board of the United Nations. He is now in private practice. His firm currently serves as Wedtech's counsel.

Mr. Pollner, we welcome your presence. We thank you for taking your time to testify today before the Subcommittee, and as will be the practice of these hearings, we will ask you to stand and be sworn in.

Do you swear that the testimony you are about to give today is the truth, the whole truth and nothing but the truth?

Mr. POLLNER. I do.

Senator LEVIN. You may proceed.

TESTIMONY OF MARTIN POLLNER,[1] OF POLLNER, MEZAN, STOLZBERG, BERGER & GLASS, NEW YORK, NY, ACCOMPANIED BY RICHARD MEZAN AND JOHN LANG

Mr. POLLNER. I have a brief statement, Mr. Chairman.

I am honored to be invited by the Chairman to testify before this Committee and I do hope that my testimony of the events involved, as the Chairman has indicated, of the rise and fall of Wedtech will assist this Committee's work. Remedial measures, either legislative or administrative, would be a positive achievement in an otherwise dismal saga of greed and corruption uncovered by the media and exposed through investigations by Federal and State prosecutors.

I would say that we were not counsel during the period of time that the Chairman has discussed the saga of Wedtech but came in on the eve of bankruptcy and during these last 9 months it has become clear to us, as the Chair and Senator Cohen have indicated, that the victims of the blatant corruption, both in the public and private sector, were numerous. Not only did the American taxpayer, the Federal Government, the purchasers of Wedtech securities and its creditors suffer substantial injury, but the most unfortunate victims of all were those people I saw in the South Bronx.

These were the employees who had their dreams shattered. They were led to believe they were fulfilling the American dream and that their futures were ripe with opportunity. Instead, they became victims of the greed and avarice that permeated former management and those in Government and the private sector who were their accomplices.

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[1] See p. 157 for Mr. Pollner's prepared statement.

Mr. Chairman, as you are aware, we have cooperated extensively with this Committee and your staff, but because of the sensitive nature of ongoing investigations by the FBI, the IRS, the Independent Counsel, and the U.S. Attorney's Office, I will be constrained in my testimony to avoid interfering with these ongoing criminal investigations and seek not to prejudice a fair trial for defendants accused and those that shortly will be accused.

The story is very simple and I will just state it. In 1965 John Mariotta was a New York born son of Puerto Rican parents. He invested $3,000 to start the small manufacturing company then called Welbilt in the South Bronx. In approximately 1970, he was joined by Fred Neuberger who had knowledge of the sheet metal fabrication business, and in 1975, because of Mariotta's Hispanic background, the company became eligible under 8(a). There followed approximately a half a billion dollars in Federal defense contracts and the profits of the company are set forth in my prepared statement.

The picture changed dramatically when we became counsel in late December, 1986. We had the major Federal and State criminal investigations, the daily press coverage—by the way, I would be remiss if I did not commend the media for exposing this corruption—and that was followed up by the investigations that you are well aware of and which you have mentioned.

We found a looted treasury. The workforce had been let out. There was no more business. We could not locate the books and records, and the Defense Department, understandably, did not want to do business with this company. As new counsel, our goals were simple. We sought to weed out corrupt management, to bring back the workforce and resume operations, and try to restore credibility with the Defense Department to recover looted assets.

We have to date recovered approximately $10 million. But sadly, although we helped return approximately 300 employees for an 8-month period, they too had to be let off in August of 1987. We began by counseling the then-current management to resign, and they did so. We obtained the resignations of Neuberger, Moreno, Guariglia and Shorten. Thereafter, we had grave suspicions of two outside directors, W. Franklyn Chinn and Bernard Ehrlich, and we counseled them and they also resigned from the company.

We brought in a new board of directors led by former Four-Star General Richard Carvasos, who deserves to be commended for being there with us during the period when this company had "corporate herpes".

We tried to salvage the company, and an overriding question haunted us, Mr. Chairman, and still does, and that is, how a company closely scrutinized by huge multinational accounting firms and monitored by on-site Defense auditors, advised by prominent consultants and attorneys, can continue for so long in its criminality and deception.

We began to investigate this matter—and I am remiss if I did not at the beginning introduce my two partners, Richard Mezan on the left, and John Lang on the right, both of whom were also former Federal and State prosecutors and I'm proud they are members of our firm and working with me day and night in what we have been able to achieve to date. But we did find, as you have stated and as these charts indicate, the mis-appropriation of millions of dollars and the bribery of City, State and Federal officials.

In our attempt to learn what was happening, we could not locate the books and records. The outside independent auditor, Touche Ross, and the former law firm that was general counsel for several years, Squadron, Ellenoff, refused to turn their records over to us. We brought proceedings in the Bankruptcy Court before Judge Buschman and obtained their records and tried to reconstruct what we could, and that is the reason on the appendices, Mr. Chairman, to my testimony, there are certain footnotes, because the records are still in disarray.

But suffice it to say, we have instituted approximately 15 actions against former management for matters that are set forth in the appendices to my testimony and those contractors who kicked back money to the former management. And we have instituted actions against the outside independent auditing firms, alleging malpractice against Touche Ross and malpractice and aiding and abetting a fraud against Main Hurdman.

As you have stated, the amounts involved are staggering; $162 million raised through public offerings, and revenues of approximately $250 million. It appears from the Federal indictments that the contracts obtained that you have mentioned in your statement were obtained in part from bribery of Federal and State officials. The offering of the securities to the public were, in my opinion, characterized from the very beginning by material distortions of the financial conditions of the company.

It is noteworthy that the original 1983 stock offering failed to disclose the $4.7 million progress payment fraud against the Defense Department even though it was known by the outside independent auditors. We have shown in my testimony, which I will not go into right now but your charts eloquently establish, that three members of former management—Mariotta, Moreno and Neuberger—received $6 million on the sale of their stock, the initial public offering, and thereafter received an additional $16.4 million on further sale of this stock through 1986.[1]

Throughout this period former management as well as insiders and consultants were selling their stock to the public, receiving more than $24 million in the aggregate. And what is very interesting is a large portion of those sales occurred in 1986, the year of Wedtech's collapse.

Their political consultants and advisers did very well, indeed. Messrs. Nofziger, Bragg and Wallach received an aggregate of 135,000 shares of Wedtech stock plus 187,000-plus in stock options. They in the aggregate sold their shares in 1985 and 1986, receiving almost $1.3 million.

In addition to receiving stock, Messrs. Chinn, London and Wallach, Nofziger and Jenkins, who were consultants and advisers, received aggregate direct payments totaling more than $2.4 million. As you mentioned, the cash payments to former management of over $8.8 million, which is set forth in one of our appendices, do not—and this is important to point out—do not reflect the $5.5 million slush fund that the U.S. Attorney, Rudolph Guiliani, who also deserves great praise in this matter, has uncovered in his investigation and former management has confessed judicially before the Court that they obtained in kickbacks from outside contractors and used that slush fund, which was called FHJ, in order to bribe—according to their testimony and their confessions—Federal, State and City officials.

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[1] See pp. 179–183, 269.

We have brought actions, as my appendix indicates, against these former consultants, and I need not dwell on them. It is before the Committee and part of the record.

But the issues that are before the Committee which has been of concern to us is how this web of corruption and criminality went so far without being detected. Not only does this require review of the systems of detection and control, both public and private, but who was compromised and how the system can improve.

We know that Fred Neuberger has confessed in his guilty plea to bribing the engagement partner of Wedtech's former auditors, Main Hurdman, of more than $1 million in benefits. And we do know that two senior people from Main Hurdman left that accounting firm and went to Wedtech at a period when great suspicions and doubts were raised.

Beyond the questions that we have brought in our lawsuits of the role of the independent auditors and why they issued clean opinions when our investigation indicated clearly that the figures were totally inflated and the company was not in the financial situation it was stated to be, and the questions that were raised, which is not in my jurisdiction but is just part of our investigation and for the Committee as to the manner in which the SBA and the military agencies supervised and audited Wedtech's participation in the program, including its qualifications.

It is clear, Mr. Chairman, from our inquiry that there were significant red flags and no one—no one, the professionals—there were some people, as you have indicated, at the SBA, but no one said stop, enough is enough, what is going on here? When things occurred, such as the public offering, and statements were made that they no longer qualified, they continued to roll on.

I do not hold myself out to be an expert on the 8(a) program, but based on my experience with Wedtech, I believe the SBA must tighten its procedures and become less political. I believe the program is—for whatever my opinion is worth—most worthy of continuation in that disadvantaged minorities do deserve assistance in taking their rightful place in our free enterprise system. However, in order to assist our citizens and the Government, the program must function properly free of this undue political influence.

I do believe that there should be tightening of the lobbying and conflict of interest statutes. Large amounts of money were expended for political consultants who claimed access or who had previously left high Government positions. Of one thing we are certain, very little of these millions of dollars found their way to Wedtech's 1,000 minority employees. These people were led to believe in Wedtech and the promise of training and employment to those citizens who need it most. Those men and women and the communities in which they live are the most seriously affected victims of Wedtech.

Thank you, Mr. Chairman, for providing me with this opportunity and I would be pleased to respond to any questions you may have.

Senator **Levin**. Thank you very much, Mr. Pollner.

First, let me say that we have been joined now by Senator Dale Bumpers, who is the Chairman of the Small Business Committee. As I indicated, we invited Senator Bumpers and Senator Weicker and members of the relevant Subcommittee to join us because of the critical role that they would play in any refashioning of the legislation which governs this program.

I understand Senator Bumpers has a statement which we can make part of the record.

Senator **Bumpers**. Yes. Mr. Chairman, I will not belabor the reading of it. I just ask unanimous consent that my statement be inserted in the record.

Senator **Levin**. That will be done.

[Senator Bumpers' opening statement follows:]

Opening Statement of Senator Dale Bumpers

I am pleased to join the members of the Governmental Affairs Subcommittee on Oversight of Government management today as they begin oversight hearings of Federal procurement under the section 8(a) Minority Set-Aside Program. I would like to express great thanks to Senator Levin for affording me this opportunity, and I applaud the tireless investigative efforts that he and his fellow members have undertaken.

Through abuse and inadequacies, the Small Business Administration's 8(a) Program has fallen short in serving the needs of minority-owned businesses across the Nation. Both employees of Wedtech and the taxpayers have been the victims of a program that has failed to enable them to become strong and competitive. 8(a) has also invited some of our leaders to manipulate its weaknesses for their personal benefit.

The corruption and ineffectiveness that plague the 8(a) Program have now hastened us to bear two responsibilities. One is the unfortunate but necessary task of investigating the deficiencies in the program which have not only disillusioned hundreds of small businesses, but which have also allowed leaders in the present administration to wrongfully benefit from it. Allegations have painted a picture of White House officials shaking the tree that holds promise for disadvantaged businesses until it bears no fruit, jeopardizing a program that is the only road to achieving the American dream for many in our Nation's free enterprise system. The greed and indifference which a handful of White House and SBA staff as well as the management of Wedtech have shown toward the program has cast a shadow over the diligent efforts of disadvantaged business people to better themselves, their families, and their communities.

The other task is one that calls upon us to restore the program's legitimacy as a public effort that is equitable and effective. As chairman of the Small Business Committee, I welcome this responsibility and I am sure that these hearings will further the legislative initiatives that our committee is designing to reform this battered program. The committee has held hearings, inspired by an extensive study implemented by Senator Weicker's staff, that have confirmed that 8(a) is viewed by participants as merely a contracts, rather than a business development, program. For many participants, the program has been a crutch rather than a catalyst, causing many failures following graduation. As well, Senator Kerry has recently held a field hearing in Boston on the need for 8(a) reform, and participants have again described a program that ignores the needs of fledgling businesses and one that has disabled their competitive ability in the free market.

The efforts of this subcommittee and our committee will put the pieces in place for an overhaul of the 8(a) program. We have and will continue to study the abuses and inadequacies that have hindered this program, and we will hopefully introduce major legislative reforms by the end of the month. These reforms will be a great step in safeguarding the program against future politicization and corruption. Our initiatives will enable participants to remain competitive beyond the incurbator provided by 8(a). Foremost, it will install measures which will foster the growth of minority-owned firms, giving them the independency and self-sufficiency for which they have worked hard and that they so well deserve.

Senator LEVIN. Senator Cohen's statement also will be made part of the record in full.

Mr. Pollner, thank you for your testimony.

First of all, we have put some charts up here on easels and the chart on the left represents some payments to selected former Wedtech insiders and consultants from 1982 to 1986 based on the best estimates available.[1] We have included in there John Mariotta, Fred Neuberger, Mario Moreno, Guariglia, Shorten, Bluestine, the counsel, Biaggi & Ehrlich, consultants Robert Wallach, Nofziger, Bragg, Jenkins, Chinn, London, Ramirez and Osgood, and I'm wondering whether or not you can indicate that you have looked at that chart and that chart is accurate and comes from materials which you have supplied to us?

Mr. POLLNER. Yes, Mr. Chairman. That chart is accurate. It comes from our investigation and the backup is found in the various appendices to my testimony.[2]

Senator LEVIN. Mr. Pollner, the figures which your firm has submitted to the Subcommittee show that the five top former management officials of Wedtech were paid a total of almost $8 million in cash payments for the years 1983 through 1986, the exact figure being $7 million, 900 and some-thousand dollars. John Mariotta alone received about $2.7 million, yet Wedtech was an 8(a) company, which was supposedly owned and controlled by someone who qualified as being economically disadvantaged.

What then was the basis, to your knowledge and from your investigation, of these huge payments?

Mr. POLLNER. The huge payments were made to those you have mentioned, much of which was part of the public record, which makes this even more complex a problem. The outside independent auditors had many of these payments to these insiders as part of their financial reporting. That material was open to public scrutiny, surely to the SBA, and clearly from your question, I can only say that it seems very inconsistent with an 8(a) program.

Senator LEVIN. In 1986 Wedtech was apparently in dire financial trouble. The company made two public offerings that year to raise some cash, and yet their records show that the company made cash payments of more than $3.7 million to consultants. How were they able to afford those?

Mr. POLLNER. The company, in my judgment, was really a Ponzi scheme.

Senator LEVIN. Pardon?

Mr. POLLNER. Was a Ponzi scheme.

Senator LEVIN. Tell us what a Ponzi scheme is, would you.

Mr. POLLNER. Yes. A Ponzi scheme is really the utilization of pyramiding, of using large amounts of money, as were in this case, which I will explain in a moment, and continuing pyramiding it until the eventual collapse of the balloon. Here, on the surface, you had $160 million raised through public offerings, huge sums of money. They bid on Government contracts—as you have mentioned, the $32 million small engine contract for the Army, which they were awarded, and subsequently, approximately $134 million from the Navy.

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[1] See p. 269.

[2] See pp. 179-183.

Our investigation indicates they underbid those contracts with knowledge that they could not perform and make money. But here is the way it worked. When you make a public offering, showing these huge amounts of Government contracts, the stock becomes very attractive. The public then buys the stock based on a prospectus showing the amount of money that would be generated by these Government contracts.

People then would buy stock. The insiders, as you have indicated and our appendices so reflect, bought and sold at critical periods. There was a great deal of cash in the company, as these charts indicate. They had enough cash to pay over $3- to $4 million to consultants to help grease the wheels of the Government machinery, although they were in financial straights from an accounting point of view, which I would rather not get into—the issue insolvency.

They did have the money to make these payments, which they did during the years, as you mentioned, 1986.

Senator LEVIN. What type of services were performed by those consultants which could possibly justify those expenditures of $3.7 million?

Mr. POLLNER. Well, as I have indicated before, Mr. Chairman, with regard to Mr. Nofziger and Bragg, who have been indicted by the Independent Counsel, I would prefer not to jeopardize their trial. And as to others, they are under a grand jury investigation.

If I can in general indicate that—and the indictment in the Nofziger case reflects, and Mr. Wallach has stated in the media—because of their relationships with highly placed Government officials, after Nofziger left and Jenkins left Government service, Mr. Wallach has stated in the media that I have read, of his relationship with the counsel to the President, who was subsequently the Attorney General, these consultants were paid to assist in getting things accomplished in this city more quickly.

Senator LEVIN. Do you have any idea how many hours those consultants that you have named put in for their $3.7 million?

Mr. POLLNER. No, sir.

Senator LEVIN. In 1986 Wedtech paid $1.1 million to R. Kent London and you are suing London now relative to that payment. What was the supposed basis for that payment of over a million dollars and tell us, if you know, did anybody else share in that payment and who authorized the payment to be made.

Mr. POLLNER. Yes. Very briefly, we have brought an action against London. I will explain it this way. Franklyn Chinn was brought to Wedtech by E. Robert Wallach. He then became a director of Wedtech and brought with him Kent London. We allege in our complaint pending before the Bankruptcy Court that Chinn entered into a scheme with former corrupt management by which he was to be paid this $1.14 million, but because he was a director of Wedtech he could not disclose it. Thereby, he had London, as appended to our complaint as Exhibit A, submit an invoice dated January 30th, 1986 to Wedtech for services rendered in connection with the company's registration of sale of 1,750,000 shares of common stock.

This was approved by Guariglia. It was paid the day before the invoice was submitted—$1 million was paid on January 29th, 1986 and the invoice we show was on January 30, 1986.

Senator COHEN. That works out to about a dollar per share?

Mr. POLLNER. Yes.

Thereafter, without going into vivid detail, but our complaint indicates, we have various other statements by London appended to our complaint of what this money was used for, and thereafter was rescinded by an agreement. The bottom line of what our complaint indicates and what we intend to prove at trial is that this money was fraudulently paid by former management, part of the pattern of other of our civil complaints, to London, who did not perform services as described in the invoice.

Senator LEVIN. Now, I will ask you about some stock that was sold by the former officials and the proceeds that they realized from those sales. Five of the former top management officials of Wedtech realized more than $23 million from the sale of Wedtech stock between September of 1983 and September of 1986, according to the records that you supplied.

John Mariotta alone received more than $9 million in stock sales. We all have to remember that this is supposed to be an economically disadvantaged person here. Securities and Exchange Commission records which have been provided to the Subcommittee show that all of the individuals except Mariotta, who had been dismissed by the board in the latter part of that period, sold considerable blocks of stock within 48 hours of each other, on March 26th and 27th, 1986 and again on April 9th and 10th, 1986—huge amounts of stock sold by insiders on those 2 days.

I am wondering if you know the reason why they would want to be selling large amounts of Wedtech stock at that particular time, 1986, on those 2 days in March and 2 days in April?

Mr. POLLNER. Yes, Mr. Chairman. Appendix 3 to my testimony sets forth the sales by the former management and outside consultants during that period and other periods. That was the period, Mr. Chairman, that the company knew that it was terminating its 8(a) status. Inside management, before the public was totally aware of it, with knowledge of same, in my opinion, unloaded their stock to the public.

Senator LEVIN. Now, your submissions to the Subcommittee show that Nofziger sold 33,000 shares of stock in March of 1986. Do you know the exact date on which he sold that stock? Are you able to give us that?

Mr. POLLNER. I will look in my records. If I have it here I will, but if not we will submit it to the Subcommittee.

Senator LEVIN. Fine. Also, if you would look in your records to see if any other Wedtech consultants sold their stock during March and April of 1986 and let us know for the record, who sold the stock, how much stock did they sell, and what the proceeds were. Do you have that handy?

Mr. POLLNER. Yes, I do. Mark Bragg sold, in March of 1986, according to the records we have obtained, 33,000 shares, receiving approximately $325,000 which was similar to Mr. Nofziger's March 1986 sales of 33,000 shares for $325,000.

Senator LEVIN. Now, the letter that you made reference to as giving the motivation for these sales was a March 28th letter, if I am correct, the March 28th letter which set forth the termination of Wedtech participation in the 8(a) program.[1] Is that the specific letter, or is it a different document?

Mr. POLLNER. There were a series of documents, but it became clear at that point that they were about to publicly announce their termination in the 8(a) program.

Senator LEVIN. What we are going to be doing is forwarding to the Securities and Exchange Commission the materials which we have identified, which are information relative to termination in the 8(a) program and information relative to stock sales by insiders and the coincidence of those sales in March and April of 1986.

Now, we are going to be referring it to the SEC for their review pursuant to the laws of this country. I just want to say that publicly so that that fact is known, that there were very clearly large sales by insiders of stock in this company right at the time that they were being removed in the spring of 1986, finally, from the 8(a) program.

You do not have to comment on that. I am just stating that as a fact that we will be doing as a Subcommittee.

We are going to follow roughly a 10-minute round robin rule here so we can get to everybody during our first round.

Let me now call on Senator Cohen.

Senator COHEN. Mr. Pollner, you mentioned some of the significant red flags that were raised and should have been discovered about the improprieties. What were some of the red flags that popped up in your mind as you went through your investigation?

Mr. POLLNER. There are several, Senator. First, in 1981 through 1983 Main Hurdman discovered a $4.7 million progress payment fraud perpetrated on the Defense Department.

Senator COHEN. Now, explain that so everyone will understand what you are talking about.

Mr. POLLNER. Yes, sir. In order to get the progress payments under the 8(a) program, you submit invoices to the agency. Wedtech, as the investigations uncovered by the FBI, had printed invoices of companies forged. Those invoices over a period of time—which were typed in—were then submitted to the Defense Department. We have figures ranging from $4.7 million to $6 million for progress payment fraud. That was uncovered, ironically, by Anthony Guariglia, who was then at Main Hurdman, subsequently became President of Wedtech, and subsequently is a convicted felon.

He uncovered it and reported to Richard Bluestine at Main Hurdman, the senior engagement partner.

Senator COHEN. At what time was this?

Mr. POLLNER. About 1982, 1983.

Senator COHEN. And he reported it to the corporate officers, though?

Mr. POLLNER. That is correct.

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[1] See p. 378.

Senator COHEN. But I am talking about what red flag should have been raised as far as the Government is concerned; SBA for example.

Mr. POLLNER. I understand. This is perhaps a little long winded, but the point is that in the confession by Neuberger, he confessed to bribing Main Hurdman and bribing—excuse me, Richard Bluestine of Main Hurdman—of $2.5 million to suppress this.

Senator COHEN. Put it in a time sequence so we will understand it. In other words, when did he confess——

Mr. POLLNER. Before the public offering.

Senator COHEN [continuing]. That he had in fact discovered the bribery?

Mr. POLLNER. He confessed this in 1987.

Senator COHEN. All right. I want to go back to 1982. In the time period you were talking about, what were the red flags raised that should have been discovered by the SBA, by the Department of Defense, the Army, the Navy, the White House, Congress, whomever. Not internally as to what was going on, but what were the red flags that we as the overseers of the Government's money and how it is being spent should have noticed and disregarded?

Mr. POLLNER. When the company went public——

Senator COHEN. See, it does not help to say that it was uncovered in an investigation in 1986 or 1987. We want to go back to 1982. What was it that was surfacing at that time that should have put us on notice?

Mr. POLLNER. I will answer your question, but the point I was trying to get to before was the fact that Main Hurdman knew about it and had a duty to report it. It was never reported to the SBA.

Senator COHEN. Okay.

Mr. POLLNER. But getting closer to responding to your question——

Senator COHEN. That is a red flag that is buried. We do not see one.

Mr. POLLNER. That is correct. And major issues are raised of what the role of the accounting firm should have been in terms of reporting it. But I will say this——

Senator COHEN. Well, now we know one of the accounting firms was bribed.

Mr. POLLNER. That is correct.

Senator COHEN. So, again, we still have no way of knowing what is going on with the taxpayers' money at that point. Where were the Government deficiencies?

Mr. POLLNER. All right. The Defense Department had an auditing team on the premises 3 or 4 days a week during the period in issue.

Senator COHEN. 1982?

Mr. POLLNER. 1983, 1984, et cetera. And did not uncover what this Committee has now before it in terms of the amounts of money involved.

Senator COHEN. Negligence, oversight, deliberate indifference to it?

Mr. POLLNER. I think negligence, oversight, and from what I understand, in all due respect—and I have served for the Government many years and have the highest regard for Government employees—I understand that these people were not terribly qualified, put it that way.

Senator COHEN. So incompetence, then?

Mr. POLLNER. Yes.

Senator COHEN. All right. No corruption at this point, as far as the Defense Department's auditors are concerned?

Mr. POLLNER. That is correct.

Senator COHEN. We have got incompetent investigators?

Mr. POLLNER. Right.

Senator COHEN. All right.

Mr. POLLNER. Now you get the public offering.

Senator COHEN. And the date?

Mr. POLLNER. August, 1983. The public offering is filed. The public offering, before it is filed, would indicate that the company is going to be raising, as we show in Appendix 2, on August 25th, 1983, $30 million.

Senator COHEN. Okay. At this point, no notice given to SBA about the public offering?

Mr. POLLNER. They are getting some, as we put it together. They are getting some because they do raise issues, which gets to the sham transaction in a moment.

Lower level SBA employees were having trouble at this point as they were learning the company was going public, and as the Chairman pointed out before in his opening statement, two issues arise at that point, an enormous red flag. A, I believe that this is the first time in history that an 8(a) company is going public, which certainly should have cried out for scrutiny.

Secondly, John Mariotta would have lost his majority control of the company, and therefore, because he was Hispanic, they would no longer qualify, which is another red flag. And third, as the Chairman has indicated, the fact that they were receiving such amounts of money—all of these people—the red flags was: are they any longer economically disadvantaged?

Senator COHEN. Did the internal records at that point show the kinds of fees that were being received?

Mr. POLLNER. The internal records would indicate the amount of stock that Mariotta was obtaining, the amount of monies that we have appended in our Appendix 5, which shows that in 1982 and 1983 Mariotta, in this period, received $350,000 in salaries and bonuses, other payments in 1982 and 1983 or $503,000, et cetera. The question then arose, how can you qualify? These are the major red flags.

Senator COHEN. You also indicated in your testimony that Wedtech was bidding contract prices for Army engines that it could not perform the contract for. That is called buying in in the trade, as such. They bid a deliberately low price for a contract, knowing full well they cannot make the product for that, hoping that they can readjust or inflate the price at some later time, renegotiate with the Defense Department because they have got a sole-source contract and nobody else is going to produce it and they have a virtual monopoly on the product at that point.

As I recall some of the facts—and correct me if I am wrong—initially they bid something like $99 million for the initial Army contract, which the Army maintained should only cost no more than $19 million. They thereafter engaged in negotiations and they finally negotiated the price down, as I recall, to $26 million from the $99 million figure, and ultimately signed a contract after negotiation for $26 million, signed a contract for $27 million, which still was $8 million higher than what the Army said it could be made for in any event.

So I am wondering in terms of the buy-in, how successful it was in the first place when, number 1, they could not build it for that price, and even at that point the price was too high as far as the Department of Defense was concerned.

Mr. POLLNER. Yes. Without getting into the numbers, in general, because this is part of a grand jury investigation that I believe will culminate in——

Senator COHEN. Well, it has something to do in terms of whether or not this is simply a case of legitimate lobbying going on that takes place throughout our political system, or whether it is tantamount to a license to steal.

Mr. POLLNER. I believe that, from what we have seen, that the Army had felt that Wedtech was not qualified to perform, as you have stated, and secondly, that the price bid was well above what they had budgeted for. As the result of consultants lobbying on behalf of the company, those two events suddenly disappeared and Wedtech was awarded the contract.

Senator COHEN. Do you believe that was due to political pressure?

Mr. POLLNER. Yes, sir.

Senator COHEN. In the SBA?

Mr. POLLNER. I believe at higher levels than the SBA.

Senator COHEN. You also mentioned during your direct testimony about how we should tighten up the ethics laws and perhaps have stronger conflict of interest legislation.

How much stronger do you think we have to make it? We have already got one individual under indictment and several more, perhaps, to follow. Are not the laws working as intended if in fact these conflict of interest statutes are being violated and subsequently prosecuted?

In other words, how long should the term of barring someone from engaging in lobbying activities take place? How long can we legitimately do so without infringing upon an individual's right who leaves Government service to then go into the private sector and engage in activities? I mean, how much tighter can we make it and can we ever sort of seal it off hermetically and prevent these types of conflicts?

Mr. POLLNER. First, I respectfully suggest something that might be most controversial, but as Watergate had cried out for certain remedial legislation, Wedtech may as well. The Committee may consider whether contacts by lobbyists and consultants to the SBA should be a matter of public record. That to me would not infringe upon the appropriateness of lobbyists and consultants to do their work, which is statutorily and constitutionally protected and I have no problem with it. But perhaps if it saw that light of day, people might be less able to do the types of things they did here.

Senator COHEN. Are you suggesting that every lobbyist in this country keep a record and file a record of every contact ever made with a Congressman or official in the Government? We have been through this. Senator Levin and I have spent years trying to fathom how we accomplish this without creating even more mountains of paperwork than we currently have.

Mr. POLLNER. I, having been with the Government, know about these mountains of paperwork. I do not think that that is the way I would approach it.

Senator COHEN. In the abstract it sounds fine. As a practical matter, I think we have to deal with the realities. What do we expect from any lobbyist? Number 1, who is a lobbyist? Is it individual citizens? Is it firms, corporate counsel, former Government employees, et cetera? Do we draw a distinction?

And then, number 2, what sort of contacts must then be registered or some notice filed?

Mr. POLLNER. I would suggest that perhaps the burden should be placed on Government officials as opposed to the independent outside lobbyists, and perhaps in this case—and I do not want to isolate or single out the SBA, but that is the focus of the inquiry—perhaps if they kept records that were available for public inspection.

There is nothing wrong, and I do not want my testimony in any way to be construed that I feel that lobbying or Congressmen and Senators dealing with their constituents is anything improper. Of course not. That is our system of democracy. But what Wedtech shows, that the interference, lobbying, if you will, consultation, whatever word you wish to use, that overrode career employees' decisions out of the blue—and we have supplied the Committee with the correspondence and others that we have been able to obtain, and I know the Committee has it—perhaps might not have occurred if there were records available by the agency indicating that, I received a call from Mr. A, this meeting was had at the White House with Mr. B, C, and D.

I do not know, but I do feel it is worthy of looking at without creating the mountains of paperwork you have discussed.

Senator COHEN. Thank you. My time has expired.

Senator LEVIN. Thank you, Senator Cohen.

We are going to be putting into the record at this or some appropriate point a series of letters, documents and memorandum relative to the issue which we have before us this morning.

Senator Bumpers.

Senator BUMPERS. Thank you, Mr. Chairman.

Mr. POLLNER, I will limit my questions essentially to the 8(a) program and what, if anything, you know about it and the SBA's role in this whole thing.

First of all, I might say that when I sit in a hearing like this and, based on what I know about it, it makes one wonder how many other cases there are out there like this that have gone undetected and perhaps are going on right now undetected. We always have to wait for these things to really blow up in our faces.

You talked about red flags just a moment ago. I was just reviewing this stock sale which occurred when they changed their name from Welbilt to Wedtech and went public. That was in September of 1983. The prospectus under which that offering was made to the public stated that their eligibility for 8(a) contracts would terminate upon the completion of that, one of the reasons being that Mr. Mariotta would only hold about 26 or 27 percent of the stock and the 8(a) program required a majority stock holding by him.

Now, here is a prospectus which shows that, here is one of the biggest 8(a) contractors, if not the biggest 8(a) contractor in the country. SBA certainly should have known about this, and there it is in big bold print in the prospectus. And so when finally they get around to asking him about it, then he goes through this elaborate scheme of purporting to buy enough stock from other insiders to give him about 55 percent of the stock of the company so they would remain eligible for an 8(a) contract.

Now, can you tell me which SBA officials—I assume you have seen that agreement?

Mr. POLLNER. Yes.

Senator BUMPERS. I have not read it, but just on the face of it, it is one of the biggest scams I have ever seen. He did not have the ability to buy it, did not have to buy it under the terms of the contract, and if he could not buy it, it reverted back to the people he was purporting to buy it from. It was nothing but a scam to remain eligible for 8(a) contracts.

Now, my question is, if you know, who in the SBA approved that thing and made them re-eligible for 8(a) contracts?

I know we are going to have, Mr. Chairman, some SBA people here tomorrow to testify but I——

Senator LEVIN. They are here today.

Senator BUMPERS. They are going to be here today on this? I just thought we might lay the ground work for this.

Senator LEVIN. I am sure they are listening to the answer.

Senator BUMPERS. We all are. Well, let me do something you and I would not do in court, or we might do this, I guess, on cross-examination, to refresh somebody's memory. Was it Mr. Neglia, the regional administrator in New York?

Mr. POLLNER. Yes. Well, Mr. Neglia has been indicted in New York as part of this scheme and we will, to save time, supply to the Committee other names that we do have in our documents who were involved with it, but I totally agree with your point, that these agreements which four of the former management have confessed now in court to have been a sham, certainly were part of the red flags I was talking about in response to Senator Cohen's question. This agreement that was created to give Mariotta control certainly required scrutiny.

When you have two agreements in which this man receives the stock but has 3 years to pay for it, has voting control over the stock but is not allowed to have it in his safe keeping, but kept with the law firm, and it is so clear to anybody that this was done because of the fact that they wanted to preserve the 8(a) status with the SBA. There were questions raised, I must say, Senator Bumpers, that there were questions raised by career people at SBA. First, as you point out, that they no longer qualified. Then the sham agreements were created, concocted to give Mariotta control.

What happens at that point? What kind of scrutiny did the SBA do on those agreements? What type of due diligence, I reserve to the Committee for further witnesses.

Then, even if it were true, as I have said before, is he still economically disadvantaged, owning 55 percent of the company?

Senator BUMPERS. I must say, from my position on the Small Business Committee and a desire not to torpedo the 8(a) program but to try to figure out, "Is it workable?" and if it is not, then go ahead and torpedo it. If we cannot design and amend the 8(a) program so that it is workable within the intent of Congress, then I am for eliminating it. I do not want to.

But if you were going to be asked to pick out the chief culprit here, number 1, Wedtech had no business getting the small engine contract. They had no capacity, no capability, no technology in the field. They certainly had no technology or capability so far as pontoons were concerned. A $130 million Navy contract, yet they get both of them.

One can only conclude, and it is an inescapable conclusion, that these contracts, of course, could not have been awarded without somebody shepherding that thing through by political influence. When I was Governor of my State, people used to say, it does not pay to be my friend because I leaned over backwards to make sure they did not get very much just because of the appearance of an impropriety. I found out that the people who gave me money and said, all I want is good Government, actually wanted a little bit more than good Government sometimes.

But in this case, if you were going to pick out the culprit, who would it be? Would it be the directors of Wedtech, or SBA officials, Wedtech's attorneys, somebody in the White House? Who do you think really was the chief architect of this whole thing?

Mr. POLLNER. Well, if that was a bar review question I would say, all of the above. I also respectfully suggest that in my opinion, for what it is worth, I would not throw out the baby with the bath water. I do think the program is worthwhile. I have seen these people, these Blacks and Hispanics in the South Bronx, who had their pride restored to them, their integrity restored to them.

The drug addiction and criminality in that area was brought down to the lowest you could possibly have. These people had a pride in their community that was brought back, but that is just my personal opinion. The culprits are many. But that is easy. The easy things in the public record are not, I think, what you are asking, Senator.

Yes, the culprits were corrupt former management, clearly. Culprits were bribed public officials, who are to stand trial and I cast no judgment on their indictments. Culprits are the outside independent auditors who did not do their job, according to our complaints.

But the Defense Department and SBA, in my opinion, with the amount of resources they had available, for them not to do what should have been done—I am not talking 20/20 hindsight, because I have had enough Government experience to know that it is too easy and I do not want to castigate both agencies or all the people, because there are very good people there. But they were asleep at the switch, Senator. They really were. It is very clear.

Senator COHEN. Would you yield?

Senator BUMPERS. I would be happy to yield.

Senator COHEN. The question of being asleep at the switch, was it incompetence or was it corruption? That is the question.

Mr. POLLNER. Yes. It is both, Senator, and I am trying to be careful here, because the former regional administrator in New York has been indicted for corruption. I do not wish to intrude in that. I do believe other indictments will follow, which I would rather not discuss in public testimony.

So that there are indictments which allege corruption, and it is clear, incompetence that we have been talking about this morning. I think it is both.

Senator BUMPERS. You stated that Wedtech was obviously hopelessly insolvent long before it was revealed that they were in that condition. Apparently that was one of the reasons for the public offering.

I take it that the figures—as Don Regan would say—the books were cooked and a lot of phony figures were thrown out, otherwise the insolvency would have been discovered long before it was: Is that a fair statement?

Mr. POLLNER. I think there was bribery of the independent auditors that failed to report the insolvency, but I think it is a fair statement, yes.

Senator BUMPERS. Mr. Chairman, just one last question, if I may. It has been reported in the media that Bob Wallach was once heard to complain in the presence of Wedtech's management that he had done a lot of pro bono work on behalf of the Attorney General Edwin Meese in his confirmation hearing—apparently he represented Mr. Meese in the confirmation hearing—and he said that because he had done all of that, that it presented a significant financial burden for him.

Shortly thereafter, Wedtech made him a present of $100,000 to alleviate his financial worries. Do you know anything about that?

Mr. POLLNER. We are suing Mr. Wallach.

Senator BUMPERS. Now, we are talking about Mr. Wallach's financial worries.

Mr. POLLNER. I understand. We are suing Wallach for $300,000 which we allege he received on a fraudulent invoice and statement for services we allege he did not perform. The incident you are talking about I know has been reported in the media. Its accuracy I will leave to Mr. Wallach, but we are in the process of suing him for that plus what we allege on information and belief that he shared in fees that former management paid to Chinn and London totaling in excess of a million dollars.

Senator BUMPERS. You have not been able to isolate a specific $100,000 payment to Mr. Wallach pursuant to that conversation?

Mr. POLLNER. No, sir.

Senator BUMPERS. Thank you, Mr. Chairman.

Senator LEVIN. Mr. Pollner, we want to thank you for your testimony. We want to move on. We have a number of witnesses this morning.

We are going to keep the record open on your testimony, and on others, so that we can send you questions that we would appreciate your answering for the record.

Senator **Bumpers**. Mr. Chairman, may I ask him just one additional question?

Senator **Levin**. Sure.

Senator **Bumpers**. Mr. Pollner, have you found any evidence that anybody in the Small Business Administration resisted the pressures being applied from the White House or people who were former White House staffers?

Mr. **Pollner**. This reminds me of a trial when you ask——

Senator **Bumpers**. Pardon?

Mr. **Pollner**. It just reminds me of experience as a trial lawyer when the witness thinks that he is finished and then there is one more question. I think that one is the most difficult to answer.

Let me try and answer it this way. I think there were dedicated men and women in the SBA who were trying to do their job, that felt certain things were occurring that were repugnant. I believe that they were overruled by higher authorities. I believe that that tale will be exposed at the criminal trial in the Southern District of New York and in other indictments that would follow.

Senator **Bumpers**. I think that is a fair answer.

Thank you, Mr. Chairman.

Senator **Levin**. Thank you very much, Mr. Pollner, and your associates.

We will now call on Donald Templeman.

Mr. Templeman, while you are standing, would you raise your right hand.

Do you swear that the testimony you are about to give today will be the truth, the whole truth, and nothing but the truth?

Mr. **Templeman**. I do.

Senator **Levin**. Mr. Templeman, we want to welcome you today. We know that you do have a statement, and your entire statement will be made a part of the record, and you may proceed.

TESTIMONY OF DONALD R. TEMPLEMAN, FORMER DEPUTY ADMINISTRATOR, U.S. SMALL BUSINESS ADMINISTRATION [1]

Mr. **Templeman**. Thank you, Mr. Chairman, Senators. I would like to read a portion of my statement, just to set the stage, so to speak, as to my role in this situation.

I was the Deputy Administrator of the SBA from April of 1981 until August of 1982.

During the first part of my tenure as Deputy, Mr. Michael Cardenas was SBA's Administrator. He left in February of 1982, and I became Acting Administrator until Mr. Sanders was sworn in as Administrator in April of 1982.

The first knowledge I had of the proposed contract to Wedtech, at that time called Welbilt, came to my attention as part of a review process that Mr. Cardenas, the Administrator, had implemented when he became Administrator, wherein any proposed expenditure of business development funds of over—I believe it was 50 or $100,000—required approval by his office, or by himself, as a matter of fact.

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[1] See p. 184 for Mr. Templeman's prepared statement.

But as his deputy, the review of those things, and recommendations to him fell to myself, and my staff. It was in the fall of 1981 that I first became aware that the New York office of SBA was putting together a package to submit to us for Business Development Expense review having to do with Welbilt.

At that time, the numbers were very large, in fact far larger than we ultimately wound up awarding, some ten to $12 million of Business Development Expense.

At about this same time, I first became aware of this within our organization, within SBA, that is, I also became aware that the White House had some interest in seeing this contract awarded.

Now it is my understanding that the White House staff was interested in the award of the small-engine contract going to Wedtech because of its potential as a means of fulfilling a promise that the President had made in the South Bronx, in a speech wherein he promised to bring some employment to that area.

Now, of course, it had been a hard-core unemployment area of longstanding, and in fact he is not, I understand, the first President that promised that. But it was my understanding, that that was the motivation behind the White House interest in this whole contract affair.

In November of 1981, I believe it was, or it could have been as late as January of 1982—because I'm going by recollection and not any records that I have—we had our first major level meeting with the Army on this matter.

The Army had, as I recall, three areas of concern. One was of course the price. Welbilt at that time was proposing $35 or $40 million for what the Army estimated should be a $19 million procurement.

The second concern was whether or not Welbilt could in fact do the job, and the third concern was whether—the third concern in the meeting was not necessarily the Army's alone—the amount of support that would be necessary, other than the contract support, was something that should be done, given the fact that the small-engine procurement was a one-time contract.

The Army had already developed another small engine which they planned to have produced, so this was a one-time contract.

The question of price was one that the Army was primarily concerned with, although the SBA certainly had a sensitivity to a fair and reasonable price. It was in fact the Army's role to do the audit, to determine if the price was fair and reasonable, and they were obligated by their own regulations and the law, not to sign a contract that they did not consider to have a fair and reasonable price.

The SBA had no staffing for auditing, and had no way of determining a fair price, so basically, we left—as in the rest of the 8(a) program—that to the procuring activity, in this case, the Army.

Given that the price was basically the Army's responsibility, the Administrator, Mr. Cardenas, properly took the position that the SBA would not try and force the Army into a contract with Welbilt unless the Army could negotiate a price it found acceptable.

The question of cost of facilities and availability of financing to enable Welbilt to perform the contract, that I believe, was originally estimated at around $10 million, was something that the SBA was more concerned with.

We did have, under the law, the authority to use funds that the Congress had appropriated for development of business. In this case it would have been for the tooling, for some of the management work, that sort of thing.

We also had funds available to provide assistance to them in terms of actual hands-on engineering assistance in developing the engines and manufacturing the engines.

We also had authority to offer them, as we did other SBA 8(a) contractors, advance payments, that is, payment before they ever produce anything.

This combination of assistance that we could offer was one of our main concerns, and of course we were also concerned that the development of all this capability for a one-time procurement, by itself, did not make much sense. The minority staff at the SBA, in the New York office, and the regional office, believed, and recommended to me, that these types of engines, or the capability to produce this type of engine, in fact had commercial potential.

And one of the things that the 8(a) contract program tries to do is to develop the ability for contractors to leave the program and to survive in the commercial market.

After the meeting with the Army in which we decided, basically, that SBA would take a look at the support package, while the Army took a look at the price, I did not have a whole lot to do with the situation for several months because that was properly the role of the Minority Small Business people in SBA.

In March of 1982, while I was the Acting Administrator, I received a telephone call from the deputy counsel to the President, Mr. Jim Jenkins, and in fact over the next several weeks I received several calls from Mr. Jenkins.

I do not recall his exact words, but he told me something to the effect that he had been given the task in the White House of coordinating this thing, to bring the parties together to see what could be done to award a contract in the South Bronx.

Of course I had no knowledge of some of the things that have developed since then. At that point it was still my belief that the main thrust here was to in fact get employment into the South Bronx.

When Mr. Jenkins became interested, of course I got more back into the details of the situation. The price was still not agreed upon, and people were still talking, internal to SBA, that we would be looking at somewhere around $10 million in support for this engine contract.

In May 1982, there was a meeting at the White House called by Mr. Jenkins in which all of the involved parties were represented. The Army, I believe Housing and Urban Development because of funds that would have gone from HUD to New York under the UDAG Program, the City of New York because they were going to put up some of the money, Welbilt, several Welbilt consultants, with them, Mr. Jenkins, and I represented SBA.

The purpose of the meeting, as Mr. Jenkins said, was to determine the status of the various parts of the package. There were still, of course, two major things being worked out. One was a significant difference in price, and the other question was the amount of non-contractual support that would be necessary to enable, Welbilt, to produce these engines.

Senator COHEN. Can I ask you, just at this point, was any other firm other than Welbilt, at that point in time, under consideration for a contract to bring business into the South Bronx?

Mr. TEMPLEMAN. Not that I know of.

Now, as I recall, in the meeting, Welbilt had just recently submitted yet another proposal to the Army, one of several, and the Army had not had an opportunity to adequately evaluate it.

It was obvious, however, that there were several million dollars still between their prices, and as I recall Mr. Jenkins, after talking to the contractors, representatives, and the Army representatives, basically asked them to go back and take another look at it, and see if this proposal would not allow them to agree on a price.

As for the support for financing, and that sort of thing, it was agreed that some funds would come from the City of New York—New York would provide money basically to build a plant—and I committed SBA to providing $3 million in Business Development Expense funds for tooling and equipment, and $2 million in advance payments to finance the production of the engines.

Of course, I thought at that time we were going to get the advance payments back, so that we were going to basically be out $3 million.

When we left the May 19th White House meeting the price was not yet settled. After that I had very little to do with the whole contract until I left the Deputy Administrator's position in August of that year.

And when I left, the Welbilt contract had not come to the Administrator's office for final approval nor, of course, had it been awarded.

This concludes my prepared remarks and I would be glad to answer any questions.

Senator LEVIN. Thank you very much, Mr. Templeman.

During the critical timeframe that we will be talking to you about, you were the Acting Administrator of the SBA?

Mr. TEMPLEMAN. That is correct.

Senator LEVIN. And you are now retired?

Mr. TEMPLEMAN. Yes, sir.

Senator LEVIN. Now, in your prepared testimony, you state that the first time that you became aware of the White House interest in Wedtech's efforts to get the Army engine contract was the fall of 1981, and can you tell us who, at the White House, was supporting Wedtech's effort at that time?

Mr. TEMPLEMAN. The first word that came to my staff of their interest came from a man named Henry Zuniga,, who worked for Elizabeth Dole in kind of a public-relations capacity.

Senator LEVIN. Was there anyone else beside him?

Mr. TEMPLEMAN. I did not hear directly from anyone else, or do I know of anyone else, by name, until Mr. Jenkins called me.

Senator LEVIN. And then in February of 1982, is it not true that while you were Acting Director, that you received a letter from E. Bob Wallach, in which Mr. Wallach stated that the award of the

Army engine contract to Wedtech was a matter of "true urgency", as he put it? [1]

Mr. TEMPLEMAN. I do not recall having received that letter at that time. I have seen the letter subsequent to then. I do not have any recollection of having received it, and that would not be unusual because when letters come into the Administrator or the Deputy Administrator, they are usually routed to the office that is taking care of that particular thing, in this case, Minority Small Business.

Senator LEVIN. We will put that letter from Wallach in the record at this time.

Now you have also stated that Jim Jenkins, who was then Deputy Counselor to the President—and that means he was Meese's deputy at that time?

Mr. TEMPLEMAN. That was my understanding, certainly.

Senator LEVIN. That he began to make phone calls to you about Wedtech, is that correct?

Mr. TEMPLEMAN. That is correct.

Senator LEVIN. And approximately how many times did Mr. Jenkins call you?

Mr. TEMPLEMAN. Oh, three, I would say. Three, four, something, like that.

Senator LEVIN. And what did he have to say?

Mr. TEMPLEMAN. His first call was basically where he said that he had been given the task, in the White House, of bringing the various parties together to see if they could not get this contract awarded for employment, and I do not know if he added these words—for employment in the South Bronx.

And we discussed a little bit of how the 8(a) contract program worked, and in fact the next one or two telephone calls were primarily my explaining to him how the system worked.

Senator LEVIN. Did he initiate three or four calls to you?

Mr. TEMPLEMAN. Yes.

Senator LEVIN. And was this level of White House interest in an 8(a) contract unusual?

Mr. TEMPLEMAN. Yes. It is the only time it happened while I was there.

Senator LEVIN. The only time it happened?

Mr. TEMPLEMAN. The only time.

Senator LEVIN. And was there also some Congressional interest in the Wedtech contract, in addition to that unusual level of White House interest?

Mr. TEMPLEMAN. I had no direct contact with any Congressional offices, or Congressmen, or Senators, during this time period.

Senator LEVIN. So, if there was, it would have been with others in your agency?

Mr. TEMPLEMAN. Yes.

Senator LEVIN. Now on May 19th, 1982, you attended a meeting that was called by Mr. Jenkins at the White House.

As I understand it, you were the only SBA representative at that meeting, is that correct?

Mr. TEMPLEMAN. That is correct.

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[1] See p. 270.

Senator LEVIN. Was Mr. Sanders aware of that?

Mr. TEMPLEMAN. He was the Administrator. He had just been confirmed the Administrator, approximately 30 days.

Senator LEVIN. Thank you. And was he aware of that meeting at the White House that you attended?

Mr. TEMPLEMAN. Yes. I am sure I told him. I would just not have gone over there, had not I mentioned it to him.

Senator LEVIN. And you have told us that the purpose of the meeting—as you understood it—was to, in effect, find a way to get this contract awarded to Wedtech, is that correct?

Mr. TEMPLEMAN. That is correct.

Senator LEVIN. And in your tenure at the SBA, were you ever called to the White House for any other meetings of that kind?

Mr. TEMPLEMAN. Not having to do with the award of a specific contract no.

Senator LEVIN. And were you aware of any other occasions when other SBA officials were called over to the White House to discuss specific contracts in this way?

Mr. TEMPLEMAN. I have no knowledge that they were.

Senator LEVIN. And would it be fair to say that Wedtech was the only 8(a) contractor in which the White House expressed such a serious interest during your experience in the program?

Mr. TEMPLEMAN. That would be correct.

Senator LEVIN. And did you brief the Administrator at that time, Mr. Sanders, of the meeting?

Mr. TEMPLEMAN. I am sure that I did. I do not specifically recall having prepared a briefing for him, but I was handling the 8(a) things for him, and I am confident that I did brief him on that.

Senator LEVIN. Now in your prepared testimony, Mr. Templeman, you state that you committed the SBA to provide $3 million in Business Development Expense funds for tooling and equipment.

Mr. TEMPLEMAN. Yes, sir.

Senator LEVIN. And $2 million in advance payments to finance Wedtech's production of the engine.

Did the SBA Administrator, Mr. Sanders, authorize you to make that offer?

Mr. TEMPLEMAN. I do not specifically recall that he did.

Senator LEVIN. All right. You also state in your prepared testimony, that over the previous year, that the SBA had been very careful about those so-called BDE, Business Development Expense awards, and in fact your approval have been required for any BDE grant over $50,000.

You state in your prepared testimony that "These controls were necessary because too much 8(a) assistance had been going to too few companies."

Mr. TEMPLEMAN. That is correct.

Senator LEVIN. In fact the statistics provided to us by the SBA indicate that a total of only $5.8 million of BDE expense money was given out to all 8(a) companies during the entire year of 1982.

So that this would have represented more than half. This one offer would have represented more than half of all the money that SBA gave out to all 8(a) companies for that purpose during the entire year.

On March 19, 1982, you sent a letter to the Army,[1] and in this letter you state——

Senator BUMPERS. Mr. Chairman, is that the letter to Miss Juanita Watts?

Senator LEVIN. It is, indeed. March 19th, 1982. In which you stated that "For us to make a multi-million dollar BDE grant to a single firm, would, we believe, raise questions about our management of the 8(a) program as a whole. Accordingly, we decline your request."

They had been requesting a large amount of BDE money.

Now, in light of this statement and the strict controls that you helped place on BDE money, can you tell us why it was that you were willing to give a $3 million, or to offer a $3 million award to a single company?

Mr. TEMPLEMAN. There are two ways of looking at that, and they both answer the question, I think. In the early stages, and although I did not sign this letter that went to Juanita Watts, about that time we were talking—that is, the various parties were talking around $10 million.

And so one of the things that I felt I was doing was eliminating the possibility of giving even more, or negotiating it down, if you will.

Senator COHEN. Who signed the letter?

Mr. TEMPLEMAN. Robert Turnbull signed it for me. He was the Associate Deputy Administrator, the next below me in the chain of command. I was probably out of town, or something.

Senator LEVIN. It was your name signed by him?

Mr. TEMPLEMAN. Yes.

Senator LEVIN. Thank you.

Mr. TEMPLEMAN. Now, obviously, that was an awful lot of money. It was, as you say, about 50 percent of the amount we had granted to that point in the year. It did appear to us that it was a thing that we could do, that was proper, legal, at that time, knowing what we did, in order to support the getting of these jobs into the South Bronx, and also, to build what was recommended to me as a very good company, although they were not engine builders, they were sheet-metal people. But they had the management and they had the record of production.

It was thought that this company could, with this kind of assistance, become a major employer there, and eventually go on into the private sector.

Senator LEVIN. Now Mr. Templeman, our staff has spoken to you in advance of this hearing and asked some of these same questions, and I want to now tell you what they indicated that you said at those meetings, and you can tell us if that is accurate.

You indicated to them, that the reason that you were willing to go along with such a large grant of BDE funds was that it is hard to resist, when you are in a meeting in the West Wing of the White House.

Mr. TEMPLEMAN. That is true.

Senator LEVIN. You are an honest man, sir.

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[1] See p. 271.

Senator **Bumpers**. They have a way of explaining things over there, don't they, Mr. Templeman?

Mr. **Templeman**. Well, yes, they do.

Senator **Levin**. Something about that atmosphere?

Mr. **Templeman**. Yes, sir.

Senator **Levin**. Now you also indicated to them, that in a normal situation, we would have resisted. When you are in the White House, and believe you are trying to help the President, you do what you can.

Mr. **Templeman**. That is true, too.

Senator **Levin**. That is true, too. And also, as these notes indicate, you specifically told our staff, that without the White House interest, "I never would have gone along with something like that because we were trying to cut down on the long-timers in the program."

Mr. **Templeman**. That is true, too. I am sure that had we not had that level of interest, and what we thought was the motivation there to get those jobs in the South Bronx, that we would have resisted much more strongly, and in fact would never have awarded a total of $5 million worth of assistance to one contractor.

Senator **Levin**. Is it your opinion that the Army never would have gone along with the engine contract but for White House pressure?

Mr. **Templeman**. It is my opinion that that is true.

Senator **Levin**. Now after the White House meeting, SBA records show that Administrator James Sanders signed a letter approving the award of SBA assistance to Wedtech, even before the company asked for that assistance in writing.

I will ask you a question in a moment. That is a statement, which I want to repeat. There was a letter approving the assistance to Wedtech signed by James Sanders, even prior to the formal request coming in from the company.

Now, was that the usual procedure at SBA?

Mr. **Templeman**. No. It would not have been a usual procedure. I believe that letter was motivated by our commitment made at the meeting in the White House.

Senator **Levin**. Now, this letter from Sanders is dated June 18th, 1982, and it says that "The U.S. Small Business Administration is in receipt of your request for Business Development Expense, BDE assistance, totalling $3 million, and that SBA hereby commits itself." [1]

As a matter of fact, the SBA was not in receipt of their request for BDE assistance, is that correct? That request came in on June 28th? [2]

Mr. **Templeman**. That must be the case because it is evident here. However, that could have very easily been an error. We had been talking about this with the SBA regional people and they had been, in turn, talking to the company for several months. It probably is just an error.

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[1] See p. 274.

[2] See p. 275.

Senator LEVIN. Did you advise Mr. Sanders to write a letter on June the 18th saying that the SBA is in receipt of the request which had not yet been received?

Mr. TEMPLEMAN. I advised Mr. Sanders to write this letter. I do not recall that I specifically noted at that time that it was in error.

Senator LEVIN. You do not remember——

Mr. TEMPLEMAN. It apparently was in error, but I did not know that at that time, of course.

Senator LEVIN. All right. My time has expired. Senator Cohen.

Senator COHEN. Mr. Templeman, is it fair to say that Wedtech probably did not even know about the BDE program at that point?

Mr. TEMPLEMAN. Oh, certainly they knew about it much earlier than this.

Senator COHEN. They did not make the request, though, in terms of their package, in order to get the price down. They were not the ones to raise the potential of SBA coming up with the BDE funds, were they?

Mr. TEMPLEMAN. No. The first that I knew of it, the New York District Office had raised that issue of supporting them with BDE. Now, what conversation happened between the company and that office, I do not know.

Senator COHEN. But it is SBA who raised the potential for using those funds, initially?

Mr. TEMPLEMAN. I have no knowledge of who raised it, initially.

Senator COHEN. In any event, assuming it is now raised, would it be unusual for you, or someone beneath you at the district level, to suggest to Wedtech, look, if you are going to narrow the gap between the contract price, to submit a formal request for these funds?

Mr. TEMPLEMAN. That would be unusual because that is not the purpose of the funds. They are not supposed to be used to narrow price gaps. In other words, the Army would not normally have paid any contractor to provide the kind of equipment that the BDE would provide.

Senator COHEN. Well, that is precisely what your letter to Miss Watts says, isn't it?

Mr. TEMPLEMAN. Where are you referring to, Senator?

Senator COHEN. "Your letter requests us to provide BDE expense funds to offset the 15 million difference between the Army's fair-market price and Welbilt's cost proposal."

Mr. TEMPLEMAN. Well, again——

Senator COHEN. And what you said at that point at least was the price is too high, if we were to give something like this out.

What was the figure they were looking for, by the way? You said multi-million. How much were they looking for?

Mr. TEMPLEMAN. I do not recall all the pieces of the package, but it was somewhere around $10 million.

Senator COHEN. So they were looking for $10 million, and you ended up giving them $3 million?

Mr. TEMPLEMAN. Yes.

Senator COHEN. But you said the $10 million would raise questions about your management of the 8(a) program. But whether you call it $10 million, or whether you call it $3 million, it seems to me what you are doing is in fact narrowing the price gap between the Army's fair-market price and Welbilt's cost proposal.

Now, if you say on the one hand that it is not to be used for that, what difference does it make whether it is $10 million or $3 million?

Mr. TEMPLEMAN. Well, I think it may be a technicality, but in fact the contractor was proposing, if I recall, something like $32 or $35 million, which did not include this other expense that it needed. It was not part of their proposal, that the Army should pay this.

They were saying, in effect, to the SBA, and to the City of New York, or they were saying, in general, we need roughly $10 million plus this contract.

Senator COHEN. I understand that, but my question really is, you are saying in your letter of March 1982, that the $10 million is too high, but you do not question, apparently, the proposition of using it to reduce the cost differential.

Mr. TEMPLEMAN. Well, again, as you see, I did not sign the letter. I would have questioned it because it was against policy to use it for that purpose.

Senator COHEN. So now we have got two distinctions to be drawn between the March 1982 and the May meeting. Number one, providing that much money, namely, multi-million dollar funding for this one firm, really exceeded all the norms.

I think the average was $100,000, going to 2200 8(a) firms, is that right?

Mr. TEMPLEMAN. I do not recall what the average was, but I would agree with you, it exceeded the norms.

Senator COHEN. So you have got, number one, too much money being allocated to one firm, but number two, it also, whatever the amount—whatever the amount, it also violated established policy.

So whether you call it $10 million that they were looking for, or you eventually gave them $3 million, nonetheless, it violated the established SBA policy, is that right?

Mr. TEMPLEMAN. I do not understand what you mean by "violating the established policy."

Senator COHEN. I just used your words. You said that would have been in violation of our policy to use BDE funds to narrow the price gap between what the Army said the fair-market value was, and what the firm proposed. I am just quoting your words back.

Mr. TEMPLEMAN. In my opinion, in the final analysis, we did not do that.

Senator COHEN. What did you do?

Mr. TEMPLEMAN. We provided $3 million of Business Development Expense funds——

Senator COHEN. For what purpose?

Mr. TEMPLEMAN [continuing]. To buy tooling and equipment, and to support some management development.

Senator COHEN. Well, by buying tooling and equipment, doesn't that provide the funds whereby they can therefore narrow the gap between what it is going to cost them?

Mr. TEMPLEMAN. I do not believe so. In my mind, it does not, because the proposal was for some $32 million, and no part of the proposal included buying this equipment or the management support.

Senator COHEN. Did you have the authority to deny the BDE funds, under the circumstances? Not you, but the SBA?

Mr. TEMPLEMAN. Yes.

Senator COHEN. And what you have indicated is you went to the West Wing of the White House, and there, it became quite clear to you that the deal had been wired, right?

Mr. TEMPLEMAN. No. I cannot see that it was wired. We again had the motivation of trying to get this contract to Welbilt to support what we thought was the President's——

Senator COHEN. Well, something changed your mind between March of 1982 and May of 1982.

Mr. TEMPLEMAN. Well, again, I have said that the White House had a great deal to do with it. I just do not know what exactly was—I could not have said it was "wired," so to speak. I thought the motivation certainly was to try and support what the President said he was going to do.

Senator COHEN. Well, here we had the Army who has questions, as I recall you testified to. They were concerned about the price, thought the price was way out of line.

Number two, they were concerned about the competency of the firm. Now I do not know where a sheet-metal firm becomes competent in building Army engines.

And you talked about having adequate management. It is one thing to have adequate management to build sheet metal; it is quite something else to be building engines, wouldn't you agree?

Mr. TEMPLEMAN. Yes. We also had, of course, a contract with the former builder of the engines to assist this company. It is not anything unusual in the 8(a) program to take someone from one basic line of work into another.

Senator COHEN. Well, the Army sure had reservations about it, didn't they?

Mr. TEMPLEMAN. Yes.

Senator COHEN. Did the SBA, also at that particular point, have questions as to whether the Welbilt was over its head at that point, as far as its financial structure was concerned?

Mr. TEMPLEMAN. I had no knowledge of that. As far as I was concerned, they were recommended to me as being a fully eligible company, that with the right kinds of assistance could do the job, and they did need financial assistance. Thus, the $2 million in advance payments.

Senator COHEN. Was there any analysis done of their financial structure as of March of 1982?

Mr. TEMPLEMAN. Well, I do not recall, exactly, what the Minority Small Business people would have done in this instance, but certainly, the auditors from the Army were looking at the proposal. But in the broader sense, I do not recall what was done.

Senator COHEN. Were there no other firms in the South Bronx area that would have been equally competent to provide this kind of Army engine?

Mr. TEMPLEMAN. I just do not know the answer to that.

Senator COHEN. Was there any attempt made to find any other companies, do you know?

Mr. TEMPLEMAN. By the time I got into the situation, they had narrowed it down. Welbilt was the only one that could do this job.

Senator COHEN. Who had narrowed it down?

Mr. TEMPLEMAN. The Office of Minority Small Business in the SBA. Now that could be a combination of people in the Washington office, and also in the regional office, and district office in New York.

Senator COHEN. I used the word "wired" before. Maybe I should have softened that somewhat. Let me see if I can get the atmosphere that you walked into over at the White House.

You were called over to the White House, not an ordinary experience, certainly, in dealing with specific contracts; probably not an ordinary experience in the course of your duties, in any event, to be called over to the White House, any more so than it is mine, or somebody else's here from Capitol Hill, I assume.

You walk into the White House, and you have got a group of people, someone representing the Army, the White House. Who else? Who else was there?

Mr. TEMPLEMAN. The city of New York.

Senator COHEN. The city of New York was there.

Mr. TEMPLEMAN. HUD, and the contractor, and several consultants.

Senator COHEN. Right. And the message comes through, We want to make this happen. Isn't that essentially it? We want this contract to go through. We want to bring jobs to the region. This is the firm that should get the contract. Yes, we know the price is too high. What can you do, Mr. Templeman, to make this thing work?

Isn't that essentially what took place in the office?

Mr. TEMPLEMAN. Essentially, except that there is one other element.

Senator COHEN. All right.

Mr. TEMPLEMAN. There were two elements. The price being too high was one element, and the other, assistance that was needed was the second element.

We treated them as two different elements, or two different pieces of the same situation.

Senator COHEN. Did SBA, at that point, have any apprehensions about the ability of this company to perform the contracts?

Mr. TEMPLEMAN. I am sure I did.

Senator COHEN. You did?

Mr. TEMPLEMAN. Yes. Now you are dealing with companies that are not fully up to par, or they supposedly would not be in the 8(a) program. They are minority companies——

Senator COHEN. It is not a question of being fully up to par. They did not have anything going at that point, did they?

Mr. TEMPLEMAN. They had a record of having produced good products. They had what appeared to our people——

Senator COHEN. Non-military products, right?

Mr. TEMPLEMAN. Yes. Sheet metal, primarily. Yes. And it was felt that, with the right kind of assistance they could make the contract.

Now that is always a risky venture, but you are dealing in risky ventures in the 8(a) program, by and large.

Senator COHEN. Thank you very much, Mr. Chairman.

Senator LEVIN. Thank you, Senator. Senator Bumpers.

Senator BUMPERS. Thank you, Mr. Chairman.

Mr. Templeman, let me just pursue the line of questioning that Senator Cohen was asking you about.

Did you ever know Mr. Jenkins, who was assistant to Ed Meese at the White House, when he was White House counsel?

Mr. TEMPLEMAN. I met him there in that capacity, yes.

Senator BUMPERS. At that meeting?

Mr. TEMPLEMAN. Yes.

Senator BUMPERS. Was he at the meeting that you attended?

Mr. TEMPLEMAN. Yes.

Senator BUMPERS. Was Ed Meese there?

Mr. TEMPLEMAN. No.

Senator BUMPERS. Did you ever discuss this with Ed Meese?

Mr. TEMPLEMAN. No.

Senator BUMPERS. Did Mr. Jenkins make any representations on Mr. Meese's behalf at the meeting?

Mr. TEMPLEMAN. No. He did not.

Senator BUMPERS. Who summoned you to the White House?

Mr. TEMPLEMAN. Mr. Jenkins.

Senator BUMPERS. What did he say when he called you?

Mr. TEMPLEMAN. He said that he had been given the task of trying to bring this Welbilt situation together, to get the contract awarded, and he first asked me—again, there were three or four telephone calls.

He asked me what SBA's thinking was. He asked me a great deal on how the program worked. Ultimately, when he called me for the meeting, he said he wanted to get all the parties together to see if we could not work out the problems and get on with awarding the contract.

Senator BUMPERS. Was he the only White House representative in attendance?

Mr. TEMPLEMAN. Yes. I believe that is true.

Senator BUMPERS. Did he mention a promise that President Reagan made in the campaign of 1980 to the people of the Bronx?

Mr. TEMPLEMAN. I do not recall whether he specifically mentioned it in the meeting, or not, but it had been mentioned earlier, and that was, I was assuming, why we were there.

Senator BUMPERS. In order to fulfill a presidential commitment?

Mr. TEMPLEMAN. Yes, sir.

Senator BUMPERS. Now, you stated in your letter to Ms. Watts with the Army, that the awarding of the amount of BDE money that had been requested was out of the question, and that the average BDE grant amounted to only $100,000.

Yet shortly thereafter, there was a $3 million grant given, is that right?

Mr. TEMPLEMAN. That is correct.

Senator BUMPERS. Is that a line-item thing in SBA's budget?

Mr. TEMPLEMAN. I believe it is.

Senator BUMPERS. How much was in it that year?

Mr. TEMPLEMAN. About $16 million, if I recall correctly.

Senator BUMPERS. And you gave $3 million to one company?

Mr. TEMPLEMAN. That is right.

Senator BUMPERS. Despite the fact that $100,000 was the average?

Mr. TEMPLEMAN. Yes. That was the—I assume that is correct. That was the average in that particular year. Earlier than that, before Mr. Cardenas put the clamps on it, there would have been a much higher average.

Senator BUMPERS. Can you tell me, from your own recollection, or any documents you might have with you—well, let me go back.

You stated in your testimony, that the last year you were at SBA, SBA 8(a) contracts totalled almost $2 billion?

Mr. TEMPLEMAN. I believe that was the amount.

Senator BUMPERS. $2 billion?

Mr. TEMPLEMAN. Yes.

Senator BUMPERS. And that there were 2,000 firms in the country who were qualified as 8(a) firms?

Mr. TEMPLEMAN. In rounds numbers, that is correct.

Senator BUMPERS. And that of the 2,000 firms, and $2 billion awarded, that this is the only time you ever knew of the White House putting this kind of pressure on?

Mr. TEMPLEMAN. That is correct.

Senator BUMPERS. Now did you ever have any conversations with Mr. Neglia in New York about this contract?

Mr. TEMPLEMAN. I do not recall that I did. Now I used to talk to Mr. Neglia frequently on a whole range of matters, of course, but I do not recall having any discussions with him on this contract.

Senator BUMPERS. Do you know Mr. Turnbull?

Mr. TEMPLEMAN. Yes, sir.

Senator BUMPERS. Was he in the SBA at that time?

Mr. TEMPLEMAN. Yes.

Senator BUMPERS. What was his capacity?

Mr. TEMPLEMAN. Associate Deputy Administrator, which was the third person down in the organization.

Senator BUMPERS. In the New York office?

Mr. TEMPLEMAN. No. In the Washington office.

Senator BUMPERS. In the Washington office.

Did you have conversations with him about this contract at the time? You stated a moment ago that he had signed this letter on your behalf.

Mr. TEMPLEMAN. Yes. I may have. We worked very closely on a day to day basis. Now 8(a) was not his normal territory, it was mine, but I may have talked to him about it.

Senator BUMPERS. Well, how would you assess the workings of the 8(a) program while you were in SBA?

Mr. TEMPLEMAN. Well, I think the 8(a) program is basically flawed to the point where it is not redeemable. I think the idea behind it, certainly, is good, but the workings of it are such that it is not a reasonable thing to expect it to achieve the results its supposed to be what it is.

In the 8(a) program you have taken a large segment, some $3 billion worth of funds away from normal procurement channels, and made it into a sole-source situation, in effect where, "You can have this contract; you can have that contract." And I think——

Senator BUMPERS. Well, do you think some of it could be fixed if you had competitive bidding in the 8(a) program between minority firms?

Mr. TEMPLEMAN. Yes. I do. A great deal of it.

Senator BUMPERS. So you would not repeal 8(a), and our Committee is going to probably be dealing with some legislation on this. You would not repeal it. You would simply amend it, and one of the things you would do would be to provide for competition?

Or would you just torpedo the program?

Mr. TEMPLEMAN. I might torpedo the program and put the authority to do it in the procurement agencies rather than SBA. Now SBA has a role, certainly, in determining eligibility, but it does seem to me that it gets, the whole process gets a bit warped.

What happens is, the Department of Defense, and others, put dollar goals on the award of 8(a) contracts every year. Consequently, their people try and find very large contracts to award so that they can meet or exceed those goals.

When in fact I think the true average disadvantaged firm needs smaller contracts and closer management. The dollar goals drive the sort of awards of the dollar magnitude of this, and others, which I personally think that awards of less than $1 million are more appropriate for many minority firms than these giant ones.

And because of this driving of the dollar goals, you have the situation I put in my statement, that when we arrived at SBA, some 35 firms were getting 50 percent of the dollar.

Senator BUMPERS. Thirty-five firms were getting 50 percent of all 8(a) contracts?

Mr. TEMPLEMAN. That is right, dollar-wise.

Senator BUMPERS. Were they all legitimate contractors, or do you think some of those were front organizations?

Mr. TEMPLEMAN. I think we had a mix of quite a few different kinds of things, and some of them were legitimate and some of them were questionable.

Senator BUMPERS. Thank you, Mr. Chairman.

Senator LEVIN. Let's go back to that meeting at the White House for a minute.

Was Nofziger there?

Mr. TEMPLEMAN. No. He was not.

Senator LEVIN. Was Bragg there?

Mr. TEMPLEMAN. I believe he was.

Senator LEVIN. And were you aware of the fact that Nofziger and Bragg were partners?

Mr. TEMPLEMAN. At that time I was not.

Senator LEVIN. And did you talk to Bragg or Nofziger other than at that meeting when you were with Bragg?

Mr. TEMPLEMAN. I have never talked to Nofziger about this, and I do not recall ever having talked to Bragg, either.

Senator LEVIN. Now, in May, Nofziger wrote Jenkins a letter, on which Sanders was copied, relative to this financing plan that they were hoping to put together.[1]

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[1] See p. 272.

Are you familiar with that letter?

Mr. TEMPLEMAN. No. I am not.

Senator LEVIN. And on June 3rd, Bragg, on a letterhead, Nofziger and Bragg Communications, again wrote Sanders, your boss, relative to that same contract, and you were copied on this one.

Are you familiar with that letter? [1]

Mr. TEMPLEMAN. I have seen it since then. I do not recall having seen it at the time it was written.

Senator LEVIN. You do not recall, now, having seen that letter?

Mr. TEMPLEMAN. Not at the time it was written.

Senator LEVIN. Both of these documents are already a part of the record as part of that packet which we made a part of the record at that time.

When did you first learn that Bragg and Nofziger were partners in that communications firm?

Mr. TEMPLEMAN. I think actually when I read it in the paper, when this whole thing started. I do not recall that I knew it at all before then.

Senator LEVIN. Now at that meeting, Jenkins started off, or at some point early, said that he had been given the task of getting this contract accomplished in the South Bronx.

Did he say who had given him the task?

Mr. TEMPLEMAN. Not that I recall.

Senator LEVIN. Did you know that he was Meese's deputy at that meeting?

Mr. TEMPLEMAN. Yes. I did.

Senator LEVIN. Did you assume that he was given it by his boss, or did you make no assumption, or what?

Mr. TEMPLEMAN. I assumed he was given it by his boss.

Senator LEVIN. You have indicated, Mr. Templeman, that without—and you have been very forthright, in saying that without White House interest you never would have gone along with it.

Mr. TEMPLEMAN. That is true.

Senator LEVIN. You had the authority to give this kind of money out, although you thought it was unwise to exercise it. You had the technical, legal authority to give an amount of Business Development Expense grant in the amount that you did. You never had exercised it anywhere near that amount.

You had expressed, in writing, to the Army, the feeling that it would really raise questions about administration of the program, for even $1 million, or a multi-million dollar amount of BDE money to be given to one firm.

So you obviously had some feelings about this. Your own feelings were set aside, overridden by your desire to please the White House, basically. Is that fair?

Mr. TEMPLEMAN. That is correct.

Senator LEVIN. And I gather from what you have told our staff, and what you have said here, that you were troubled?

Mr. TEMPLEMAN. Well, I was troubled by this, and many other 8(a) contracts. I was concerned with the Army getting the engines near the price, near the time they needed them.

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[1] See p. 273.

Senator LEVIN. And so your own feelings as to what good policy was were laid aside, and the real question, or one of the questions that we face is how do we get our agencies to resist pressure? There is always going to be lobbying from the White House, from Congress, from all kinds of people.

In a free society, you are not going to be able to stop folks from advocating positions. The question is: we have people like you who were there who know it is wrong.

You have got the authority to do something, but you know it is wrong to exercise it in a particular case, and in this case you are put in a position that you have never been put before.

As far as you know, no SBA person had ever been put before, right at the White House, being told we want to accomplish something.

Can we build something in the law to get you to say no? Or do we have to put something in the law? You cannot stop people from advocating a position. How do we stiffen the backs of our agencies to resist the kind of pressure that you were put under?

Mr. TEMPLEMAN. Now before I answer your question, you said I know that it is wrong. No, I did not know that it was wrong. It was perfectly legal, it was not that contrary to things that had been done before in the program. I thought it was probably unwise, which is to my mind different than——

Senator LEVIN. Well, that is fair enough. Unwise. You felt it was unwise but you went along. And how do we get you to not go along when you think something is unwise? You are a forthright person. You have acknowledged some things here. How do we stiffen the backs of our agencies?

Mr. TEMPLEMAN. I think one of the ways to do it would be to put some—and it is more restrictive than it has been in the law now—I think to put some absolute limits on what size of contract awards, and what size BDE awards can be made.

You know, it is very difficult, even if you believe it is unwise to resist, your whole organization that is trying to—has in fact in the law the responsibility to—promote minority business. You have some people in the Congress that are also, at that time especially, promoting large awards, so-called minority enterprise as compared to business. It is difficult to be in a position of resisting all of that, and the White House, unless you have something to fall back on.

Now it reminds me of the procurement process, and most organizations have what is called a contracting officer. I was one for several years.

A contracting officer has, under the procurement regulations the authority to say no, and in fact they cannot be removed, hassled, or anything else, and I have said no to many, many deals because it was not wise, it was not in keeping with the regulations.

But in the 8(a) program there is not anything like that for a person that was in the position I was, or even in the region or district to say.

If you have something that says this person has the authority to say yes or no, or that there are certain amounts, you would have some teeth in for people to fall back on.

Senator LEVIN. You know, we have mentioned lobbying here, and, again, that kind of lobbying, at least advocating positions, is not going to end. We can put restrictions on it, we should tighten those restrictions and a number of Committees are looking at things to tighten—who can lobby who in circumstances when they leave the Government.

I am troubled, probably first and foremost here, by the way in which the President's decision to, quote, "help the Bronx" was used for personal gain by a group of politically connected consultants. That troubles me.

And these connected people cashed in on the good intentions of the President in creating employment in the South Bronx. Millions and millions of dollars into the pockets of politically connected consultants.

Now you can write all the regulations that you want, and we can tighten up the rules on the SBA program, but the bottom line—you are still going to be lobbied by people who leave the Government, who know people who are still in the Government, who know people you know.

And I believe that a lot of folks were troubled here. I know it, from our staff talking to you, and to some others. They were troubled by it. They knew this was unwise to proceed, and proceeded anyway.

Did you share your feelings that this was unwise, with anybody in the SBA?

Mr. TEMPLEMAN. I am sure I did, yes. You know, I am sure that I raised many issues and shared these thoughts with the Associate Administrator for Minority Small Business, with my own staff, and I probably did with Mr. Cardenas. I do not recall having had that kind of talk with Mr. Sanders.

Senator LEVIN. On this specific contract?

Mr. TEMPLEMAN. Yes.

Senator LEVIN. Senator Cohen.

Senator COHEN. Well, if I could just add a couple of comments. First of all, let me begin by asking you, again, the competence of the Welbilt firm at that point in time.

As I understand the records, they showed that Welbilt did not have sales more—I think it was about $2 million a year in business, and here we are talking about them getting a $27 million contract.

Didn't that present a lot of management problems, a firm that small with business not exceeding $2 million a year, suddenly being given a $27 million contract?

Wasn't there a real management problem with that?

Mr. TEMPLEMAN. Oh, absolutely. That, a tenfold upscale in operations. And as I said in response to the Chairman's question, I think that one of the major problems in the program, is that they do just that sort of thing.

Senator COHEN. And the solution, on the part of SBA, and others, would have been to get them more contracts. To balloon itself up to a $27 million management capability, you have got to then sustain it at that level, and that means more contracts, does it not?

Mr. TEMPLEMAN. Yes.

Senator COHEN. And that is what happened here, going from an Army contract, to a Navy contract, with other Government programs basically feeding this ballooning of the firm. Is that right?

Mr. **Templeman**. Yes, until hopefully, the law says they are to graduate at a certain period of time, and the regulations say—and I think it is five years—or did at the time I was there.

Senator **Cohen**. Except that that is not what took place here. We had lots of extensions being applied for and granted.

Mr. **Templeman**. Unfortunately, that is the rule rather than the exception.

Senator **Cohen**. In fact about 90 percent plus of the business that this firm had was all through the Government, was it not?

Mr. **Templeman**. Yes.

Senator **Cohen**. If I were looking for a literary metaphor, I would probably go back to J.D. Salinger's banana fish story that he wrote many years ago these fish that just keep consuming and consuming until they finally burst and self-destruct.

I think that is probably what occurred here.

But Senator Levin mentioned something about stiffening the backs of agencies, and the question occurred to me—we have a similar problem in Congress about stiffening the backs of Congress because we are called upon by our constituents every single day, one firm or another, to lobby on behalf of promoting business to them, the region, whatever it might be.

We have constituents to respond to and of course the Executive agencies do not have constituencies as such, but they have one very big one and that is the President of the United States, and that is what you felt you were responding to when you were brought over to the White House itself, is it not?

Mr. **Templeman**. That is true.

Senator **Cohen**. I think there is a legitimate responsibility that you have in situations like that, where you have to respond to your constituent, the main one, as well, but it stops I think when we get to areas like bribery, obviously, corruption and kickbacks, obviously, which were not involved, to your knowledge, at this point.

But essentially, I think one of the guidelines has to be a sort of perversion of the system, something so patently offensive, and fundamentally offensive, that it just rubs your sensibilities the wrong way.

And I think it came close in this particular case, if it did not exceed it. But I think we found, in this case, and others, when you start distorting the process, when you start taking BDE money, or something else, to try and make it work, in order to accommodate one firm or another—you start distorting the process and you essentially start disfiguring the policy, and that is what we have got here with respect to 8(a).

I share Senator Bumpers' concern. This is probably one firm among many that have tried, and perhaps successfully distorted the process in order to achieve their own goals.

Senator **Levin**. Thank you. Senator Bumpers.

Senator **Bumpers**. Mr. Chairman, you know, in a sense, at this stage of the game, there really was not all that much wrong.

Mr. **Templeman**. There was no evidence of anything but maybe some unwise decisions at this point.

Senator **Bumpers**. Yes. It seems to me that—of course you know there are jobs at stake. Jim Sanders had just been in the office 30 days, the President had just made him Administrator. He is in no mood to take the White House on. They have just given him the job as the Administrator.

And the President probably, you know, just said, look, I promised those people in the Bronx some help, and here's a chance to do it. See what you can do for them.

That is all he would have to say. I know how that place operates.

How long were you at SBA?

Mr. **Templeman**. Well, that time, I was there from April of 1981 until May of 1984, but I had been there previously for several years, too.

Senator **Bumpers**. Had you ever been to the White House before?

Mr. **Templeman**. I had been there many times for other meetings and other purposes.

Senator **Bumpers**. Yes. And I can understand why the President felt that a campaign commitment, this would be a good way to show his good faith and the commitment he made to the people in the South Bronx.

And it is a very fine line, Senator Cohen, as you have correctly pointed out. You get calls, I get calls. I have called the Farmers Home Administration and said please help old John Doe down here. He is a good guy. And every time I do that I get goose bumps, and I think, you know, what am I doing?

And yet those are things that we politicians are called upon to do all the time, and I am always reluctant to do it, but I want to help. We have got two counties in my State that are about like the South Bronx when it comes to unemployment. From the time I was elected Governor of my State, until today, I have tried to get the Corps of Engineers to build a port there.

I have tried to hand-lead every industry in the United States into that area. Freed up a bridge that used to cost 50 cents to cross when I was Governor. Anything to try to help those people down there.

And the truth of the matter is, the 8(a) program is laudable in intent, not so laudable in practice, and our job is to try to figure out what we are going to do here.

If you have got 2,000 contractors—and maybe some of them are not so "hot", but this is the only one that has really turned sour—that this thing turned sour because of greed and corruption. It did not turn sour because of the program.

If I were going to fault you, Mr. Templeman, it would be that you did not stand up at a time when you might have, and I must say, I am not sure I would have, being in your shoes. I am just saying this is the way it works, by saying, look, we have checked this firm out. They have about as much chance of doing a small-engine contract as a one-legged man of rear kicking.

And you could have said, we ought not to do this, this company is not going to be able to do this. And at that point, of course, if somebody said, well, we are going to do it anyway—said, well, okay, it is okay with me, but I am just telling you, I do not think this thing is going to work out.

At some point maybe it would—you know—we would have been able to stop it before so many people got hurt. I mean, literally hundreds of people, whoever bought these public offerings, were really hurt badly.

But I must say, the art of politics is the art of helping people, and I have always felt that I was a very ethical politician, and yet I sometimes wonder, you know, where is that very fine line when you are trying to help people.

If it turns out well—I can remember a company in my State getting a $10 million Farmers Home loan. I called the Farmers Home Administration and I said, look, I do not know anything about the financial capacity of this company, they employ 800 people in my State. Naturally, I would like to see them get the loan, but you are the ones that are going to have to make that decision, and I am just calling to tell you, they are really important. They are the biggest employer in the county.

They made the loan, and within a year, the company went bankrupt, and that really troubled me, that I had made just that much of a call to say, you know, I am interested, if you are the ones who have to make the final decision based on their financial statement. And I was really troubled by it.

The good news is, that because there was a low interest, the Farmers Home Adminstration loan for that business, somebody else was willing to come in and buy the company and assume that loan, and today they employ 1,600 people. It is one of the most viable companies in the State of Arkansas. So all is well that ends well, but it could very well have just been a total bankruptcy and the Farmers Home Administration would have lost $10 million.

I am telling you, I am not sitting here as a holier than thou Senator. I know how these things happen, and as I say, at the point that we are talking about in your case, there really was not all that much wrong with it except a lot of people knew this company was not going to be able to perform that contract and that should have been made crystal clear at the time.

Later on, when the fraud and corruption started, that is why we are here today. Thank you, Mr. Chairman.

Senator **Levin**. Mr. Templeman, before we excuse you, let me just add one comment. The bottom line to me is that the agency here went along with an unwise step. They did it because they thought the President wanted them to do it. That is the fine line we are talking about.

But we see some of the fallout from that as things proceeded to get worse over the years. We do indeed make calls all the time to agencies urging them on. As I said, there are going to be advocates for causes, hopefully, in this democracy.

But we have also got to find ways to encourage people to stick to their guns in the agencies when they think the answer should be no.

Most of the time in which we call, or many of the times, we are told, sorry, we just cannot do it, we think it is an unwise move. We expect that to happen, or should, and we ought to applaud it, by the way.

We may be disappointed in a particular case when we do not get whatever action we wanted from an agency, but we ought to be applauding an agency which says no, we just simply think it is a mistake to do what you are asking us to do.

So there is, indeed, a very fine line as to what we should be expected to do on behalf of constituents, but we have a Constitution, we are celebrating its 200th birthday.

That Constitution provides that we are a check on the bureaucracies, on the Executive Branch, and the Executive Branch is a check on us, and when there are excesses or bad judgment on the part of either, hopefully, the other will catch it, and that is the genius of this Constitution.

It did not work out in this particular case, but nonetheless, we are going to try to, if we can—and this is where Senator Bumpers and his Committee are so critical—try to change this program in particular, so that this kind of mistake does not occur again.

But as fine a line as that is, I must tell you what is not so ambiguous in my gut, is the way in which politically connected consultants descended on this company like flies, and lined their own pockets with millions of bucks for relatively few hours of work.

That is what sickens me. We can sit here and agonize over the proper role of the legislative branch, and whether or not somebody in the bureaucracy should say no to the President in effect.

And we all agonize over those kinds of questions, but what is agonizing, and deeply disturbing to me, is the way the good intention here, which is to bring the jobs to the Bronx that the President had expressed, was used by people closely connected to political decision-makers, to line their own pockets.

That troubles me, deeply, and that is the other aspect of this case beside the 8(a) aspect, is to how we can tighten our ethics laws.

I am not talking about the bribes. Obviously that is already prohibited by law. I am talking about the way in which people with good political connections, just leaving the Administration, or close to an Administration, are able to cash in on a decision by the Administration for a good intention or a good purpose, to help bring jobs to a particular area, and that is something which I know this Subcommittee is going to be spending a lot of time on in terms of ethics, and how we can tighten up those laws.

You have been forthcoming here in your testimony this morning, we appreciate it and we thank you, and you are excused.

Senator Levin. We are going to have our next witnesses one by one rather than as a panel. The next witness will be Aubrey Rogers, who is the Deputy Regional Administrator of the Small Business Administration in New York.

Mr. Rogers, if you would, while you are standing, do you swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Rogers. I do.

Senator Levin. Mr. Rogers, we welcome you. You are still the Deputy Regional Administrator of the Small Business Administration in New York. You have given us a statement, and we will put the entire statement in the record. You may proceed to summarize that if you would, or proceed as you wish.

TESTIMONY OF AUBREY A. ROGERS, DEPUTY REGIONAL ADMINISTRATOR, U.S. SMALL BUSINESS ADMINISTRATION, NEW YORK, NY [1]

Mr. ROGERS. Thank you very much, Mr. Chairman.

Mr. Chairman, in your letter of August 13, 1987, you asked me to provide information to this Subcommittee on 5 issues related to the SBA's Section 8(a) program. My statement will deal with these issues in the order listed in the letter.

The first issue pertains to Wedtech's 8(a) eligibility in light of the company's public stock offering and the stock transaction entered into among its owners in 1983. That public stock offering came to SBA's attention in the summer of 1983. That event posed a novel question for the SBA in that to the best of my knowledge, prior to Wedtech, no 8(a) company had gone public and certainly none had done so and remained in the 8(a) program.

The SBA District Office immediately dispatched a letter to the company seeking details regarding the stock transaction, including information pertaining to the net worth of the company and its principals, ownership and board control.

The company responded providing information which showed that John Mariotta, the person on whom eligibility was based, no longer controlled the company and no longer had at least 51 percent interest therein. After discussing the matter in agency committee—that is, at the district level—on September 14, 1983, the district office issued a letter to Welbilt Electronic Die Corporation, Welbilt for short, as the company was then known, setting forth specific reasons why the company should be terminated from the 8(a) program. The letter gave the company 30 days to respond, and as I recall, Welbilt sought and received additional time.[2]

In the meantime, another event, an important deadline faced the SBA and faced the company. Earlier during 1983, the SBA had considered the company's request for an extension of its Fixed Program Participation Term. The regional office's recommendation on that matter was then at central office for final action. In view of the pending eligibility deliberations, it was decided in late September to postpone the final action of the FPPT extension, and instead to issue a bridge letter to the company, a device that was used by the SBA to continue the firm's 8(a) eligibility pending processing of its FPPT extension request. Welbilt responded to the September 14th letter in December 1983.

Now, my prepared text does indicate that the response was late December 1983, but I have since been corrected by my colleague in the office. It appears that the records show that a response was made in early December 1983.

The company presented documents reflecting certain transactions which transferred shares of stock to John Mariotta such that, if they were valid, Mr. Mariotta would have owned approximately 55 percent of the company. Additionally, Wedtech presented information which showed that its board of directors at that date consisted of 5 individuals, 3 of whom were Hispanics and each of whom applied for social and economic disadvantaged status.

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[1] See p. 190 for Mr. Rogers' prepared statement.

[2] See p. 290.

This information was discussed by the staff of the New York District Office, and that office found that Wedtech was eligible to continue in the 8(a) program, and in early January 1984, it recommended that the regional office concur and forward to central office a recommendation extending Wedtech's FPPT for a period of 3 years. That extension would have kept the company in the program through October 1986.

Due to the novelty of the issue, the New York District Office consulted with the regional office during the discussion of the eligibility problem. There were (3) principal concerns.

One, was the stock transfer to John Mariotta a bona fide, valid transaction?

Two, and if so, were the principals, John Mariotta and Mario Mareno, economically disadvantaged in view of their substantial net worths?

Three, was the company itself economically disadvantaged? That is, did it have adequate access to credit and capital as did companies its size in the same line of business?

The District Counsel in the New York District Office researched Concern No. 1 and issued an opinion concluding in the affirmative.[1] As to the second concern, the SBA standard, as expressed in Standard Operating Procedure 80-05, spoke to whether the applicant principals, here John Mariotta and Mario Mareno, had access to credit and capital similar to other persons in like businesses. The district office's determination was that they did not, arguing that their high net worth consisted mainly of the stock which the Securities and Exchange Commission prohibited them from transferring for 2 years. Additionally, the district argued that persons engaged in businesses of this nature needed sizable net worths in order to induce financial institutions to extend credit.

A similar argument carried with respect to the company's economic disadvantaged status. Additionally, it was recognized that 8(a) requirements comprised 95 percent of the company's workload at that time, which meant that the company would probably have gone into bankruptcy had it been terminated from the 8(a) program at that time.

The regional office concurred in these findings and recommended approval of a 3-year extension.[2] That approval was granted by the central office on January 25, 1984.[3]

The second issue pertains to Wedtech's economic disadvantaged status in 1984, 1985 and 1986. In 1984, and for the remainder of that year, Wedtech remained eligible for the 8(a) program. In 1985, the company's eligibility was questioned once again. The 1983 stock transfer required John Mariotta to make certain payments by January 1985.

I am aware that the statement of my colleague, Mr. Rose, differs from this in that he recalls it being a period of 2 years. But this is my recollection. I did not have the privilege of finding this document in the file.

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[1] See p. 363.
[2] See pp. 366, 368.
[3] See p. 370.

My recollection is that that stock transfer required Mr. Mariotta to make certain payments by January 1985. Failure to do so would have triggered cancellation of the transaction, thereby impairing ownership and control. Mr. Mariotta failed to make the payments; however, as I recall, the parties agreed to an extension of the terms through January 1986, thereby avoiding reversion and satisfying SBA's concerns about eligibility.

Later that year in 1985, the district office conducted an annual review of the firm and concluded that the firm was in superior financial condition because by that time it had raised and floated a bond issue valued at approximately $40 million, and that it was no longer economically disadvantaged. On May 1, 1985, the district office wrote to John Mariotta stating that the SBA considered Wedtech ineligible for the 8(a) program and required a response in 30 days. In June 1985, the company informed the SBA of changes in its board of directors, and advised us additionally that John Mariotta had been removed from the office of vice president and promoted to the office of chief executive officer.

On June 25, 1985, the New York District Office again wrote to the company. The SBA letter stated that eligibility was in jeopardy, citing loss of control by the economically disadvantaged individuals and again giving the company 30 days to respond.

On July 11, 1985, the company, through its attorneys Biaggi and Erlich, requested an extension to respond to SBA's letter. The district office granted that extension through September 1985.

Wedtech responded by the due date, and the information it submitted was analyzed by the district office. The information clearly showed that the company had lost its eligibility. The remaining task was to process the termination.

While the district was performing this task, the Wall Street Journal published a story in its February 13th issue which suggested that John Mariotta had not paid for the "transferred" stock and that the stock had reverted to its original owners.

The district immediately wrote the firm seeking confirmation. Wedtech responded and on the basis of the information provided, the district informed the company on March 26th that its eligibility was in question and the office intended to terminate the firm from the 8(a) program. The company responded by agreeing to voluntarily withdraw from the program, and an agreement to that effect was executed and approved by the Associate Administrator for Minority Small Business on April 9, 1986.

The third question, the decision to extend Wedtech's Fixed Program Participation Term. I have already dealt with that in item 1, and so I move to issue 4.

Senator **Levin**. Thank you. That would be appreciated in terms of our time.

Mr. **Rogers**. The selection of Wedtech for the Navy pontoon contract: In June 1983, I was detailed from my position as Deputy Assistant Regional Administrator for Minority Small Business in the New York Regional Office, and detailed to the position of Assistant to Joseph Bennett, who was then the acting Associate Administrators for MSB in the central office. My function was to assist Mr. Bennett on matters as assigned. Selection of contractors for the pontoon project was one such assignment.

During the summer of 1983, Mr. Bennett asked me to work with him in selecting contractors for the pontoon project. As I understood it, the SBA was interested in this project because it offered non-traditional and high dollar volume contracting opportunities for 8(a) firms.

I attended a meeting with Navy officials at which they briefed SBA staff on the project. Subsequent staff meetings were held, and Mr. Bennett and I were assigned to develop a list of contractors, some of whom would serve as primes and others as subs.

Our list, which I did not keep, contained several names including Wedtech, Medley Tool of Philadelphia, Bay City Marine of California, two companies in Texas, one in Atlanta, and another in Chicago. Those names I do not recall at the moment.

I left the central office assignment in September 1983 and returned to permanent duty in New York. However, I was asked to continue on the pontoon assignment through the contractor selection process. Accordingly, I returned to Washington periodically to work on the assignment.

As discussions with the Navy continued, it became clear that the Navy wanted to deal with one prime contractor and no more than one subcontractor. As I recall, for the first phase of the contract, the Navy wanted an East Coast contractor near to a major waterway. Wedtech and Medley Tool fitted these criteria. The next decision was to determine the prime. Wedtech at that time had superior financial strength, and it had demonstrated capability on the engine contract. The Navy conducted a pre-award survey and accepted Wedtech as prime and Medley Tool as subcontractor.

In January 1984, the Navy offered the requirement to the SBA, and Wedtech oposal to include Medley Tool as a subcontractor. Unfortunately, due to internal problems at Medley Tool, that company was unable to submit a satisfactory proposal, and it subsequently withdrew from the project.

Negotiations took place during March, and a contract with options was signed in April 1984.

The last question pertains to political pressure. In my role as Deputy Regional Administrator, I have had to respond to a variety of inquiries from political figures. These inquiries have run the gamut: from 8(a) matters, to forgiveness on a $2,000 disaster loan, to inquiries advocating that more employees be assigned to an area. I would not characterize these inquiries as political pressure. I regarded them merely as routine inquiries pertaining to the status of the constituent's problem, and I responded promptly and courteously with due regard for the office of the Congressman or Senator, but without regard to the political consequences.

I believe that my experience is shared by the majority of SBA employees, and at the risk of being naive, I would venture that if political pressure is exerted within the SBA, it is limited in scope and effect.

Mr. Chairman, I trust that these remarks respond fully to the issues raised in your letter. I will be happy to answer any questions you may have.

Senator LEVIN. You are indeed a risk taker, let me first say that.

Mr. Rogers, in September of 1982, Wedtech was awarded a $31 million contract to produce military standard engines. And this was the largest manufacturing contract ever given out by the New York SBA up to that time, is that correct?

Mr. ROGERS. That is correct.

I believe, Senator, the date is September 1982 the contract was signed.

Senator LEVIN. Pardon?

Mr. ROGERS. I believe that the contract was signed in September 1982.

Senator LEVIN. That is what I intended to say if I did not.

Now, Wedtech was awarded $3 million in business development grants and $2 million in advance payment money to assist it in the performance of this contract. The business development grant to Wedtech was the largest award ever given by the New York SBA, was it not?

Mr. ROGERS. That is correct, sir.

Senator LEVIN. And did that award exceed the total allotment of BDE money for the New York office for that fiscal year?

Mr. ROGERS. That is correct.

Senator LEVIN. The assistance was approved by the SBA Administrator before the formal paperwork was processed, was it not?

Mr. ROGERS. That is correct.

Senator LEVIN. And was that unusual?

Mr. ROGERS. That was unusual. But, under the circumstances, our office understood why it had to be done.

Senator LEVIN. All right. Immediately after the award of the Army engine contract, Wedtech ran into serious financial difficulties and, in this period, I understand that you participated in many SBA meetings related to Wedtech's submission of improper progress payment requests, Wedtech's failure to pay its taxes and related issues, is that correct?

Mr. ROGERS. That is correct.

Senator LEVIN. Now, you told the Subcommittee staff that you believe that many of these problems could have been avoided if the SBA had done a careful audit of Wedtech's financial condition and discovered these financial difficulties before awarding the Army engine contract. Is that correct?

Mr. ROGERS. That is correct.

Senator LEVIN. And do you know why such an audit was not performed?

Mr. ROGERS. At least one reason. When the contract was awarded, there had been a long period of negotiations that preceded it. As witnesses before have said, this item had been discussed at the Central Office level and at the Regional level, and had been in some stage of discussion since 1981.

Now, having gone through such a lengthy process of negotiation, it sometimes gets to the point in negotiating 8(a) contracts that a financial condition that existed at the time that negotiations would begin would no longer be valid at the time a contract was awarded. This was the case with respect to the engine contract.

The other matter is that we do not have staff, and did not have staff at the Regional or District Office at that time who would have been available to do the kind of in-depth audit that I spoke to members of your staff about. What I was thinking of at that time would have been a full-fledged audit that would probably have involved several staff people doing in-depth accounting analyses, maybe reviewing a number of internal records of the company in order to find out the true financial condition.

As it was, we relied on financial statements from the CPAs of that company and, based on the figures presented therein, that was the information that was relied on.

Senator **Levin**. Mr. Rogers, in the summer of 1983, before it had produced a single engine for the Army, Wedtech went public and raised $22 million through a stock offering. The stock offering reduced Mr. Mariotta's stock ownership to 26 percent and placed the company's continued economic disadvantage in grave doubt.

In your prepared testimony, you state that Wedtech's public stock offering, which you acknowledge was the first ever by an 8(a) firm, "came to SBA's attention in the summer of 1983."

How did that stock offering come to SBA's attention? Did they inform you? Did you read about it in the paper? How did it come to your attention?

Mr. **Rogers**. Maybe I ought to amend my statement. Rather than saying it came to SBA's attention, say it came to my attention. And it came to my attention from staff members in the Regional Office. I was at that time in Washington on assignment and detail. And I called one day and this was said to me, that the company was going public and it indeed planned to make a stock offering, and that this would be finalized by late August or early September.

Senator **Levin**. And did they tell you how they found out about it in the Regional Office?

Mr. **Rogers**. I believe there was a rumor rather than a direct contact by the company as should have been the case.

Senator **Levin**. What was the reaction to the discovery in the New York Regional Office of the company going public?

Mr. **Rogers**. Well, there was substantial alarm——

Senator **Levin**. Substantial alarm?

Mr. **Rogers**. Alarm at my level simply because we were unaware of a situation like this. As a matter of fact, the standard operating procedure did not cover to such a condition. And there was concern as to whether we could keep this firm in the 8(a) program.

Senator **Levin**. Did you use the word "disbelief" in talking to my staff?

Mr. **Rogers**. I probably did.

Senator **Levin**. Would that be a fair way to characterize the reaction of the Regional Office, disbelief?

Mr. **Rogers**. I would characterize it more as concern.

Senator **Levin**. And did you also tell our staff that this did not come to the SBA in the proper way?

Mr. **Rogers**. I did.

Senator **Levin**. How should it have come, that information?

Mr. **Rogers**. There should have been a writing from the company to the District Office indicating that it intended to change its ownership by offering the stock.

Senator **Levin**. And is the failure to so notify the SBA grounds for termination for that program?

Mr. **Rogers**. That would be grounds for termination.

Senator **Levin**. And in your prepared testimony, you also state that after the public stock offering, John Mariotta, the person on whom eligibility was based, no longer controlled the company, no longer had at least 51 percent interest therein. Section 8(a) permits participation only by companies which are at least 51 percent owned by one or more economically disadvantaged individuals.

Did Wedtech at that time, after the public stock sale, meet that requirement?

Mr. ROGERS. Wedtech did not meet that requirement based on the information provided.

Senator LEVIN. And at that time then they were not eligible for the 8(a) program, is that correct? At the moment, they were no longer eligible when Mariotta lost control of 51 percent of the stock, is that correct, at that moment?

Mr. ROGERS. That is technically not correct.

Senator LEVIN. Technically not correct?

Mr. ROGERS. Technically not correct because there is one official, or probably two, one official in the SBA who has the authority to declare a firm eligible or ineligible. And that official is the Associate Administrator for minority Small Business. He, or she, determines eligibility or non-eligibility so that any assessment at the local level, that is District or Region, is in the form of an opinion and then from that you develop a recommendation that a firm should be terminated because it's ineligible.

So that technically it was ineligible based on our opinion, but the officer in Washington is responsible for making the determination.

Senator LEVIN. The officer in Washington has to act on it but, as a matter of law, you have to have 51 percent, and he no longer had 51 percent, is that correct, as of the time of that sale?

Mr. ROGERS. That is correct. But no one in the District Office or the Regional Office has the power to say that you are ineligible and, therefore, you are out of the program. That could only be done in Washington. And there is a procedure for doing that which is a time consuming procedure.

Senator LEVIN. My time is up.

Senator Cohen?

Senator COHEN. Theoretically then, one could delay that decision in Washington, and a firm that otherwise might technically be disqualified could continue to participate?

Mr. ROGERS. That is correct, except that.

Senator COHEN. Is there a time limitation on how long the decision can be delayed?

Mr. ROGERS. No. I believe that a firm could stretch that out if it——

Senator COHEN. Not the firm. Someone you said here in Washington.

Who is the person, the person in charge of the Minority Small Business Administration?

Mr. ROGERS. Yes, the Associate Administrator.

Senator COHEN. Associate Administrator. That person has to make the determination?

Mr. ROGERS. Has to make the determination.

Senator COHEN. Is there a time limit on how long that person has to make such a decision?

Mr. ROGERS. I do not believe there is a time limit.

Senator COHEN. So, theoretically, that decision could be delayed ad infinitum as long as, you know, 2 or 3 years conceivably. Theoretically, according to what you are testifying to today, and even though that person no longer has 51 percent ownership of the company, the company could still qualify for 8(a) treatment, is that right?

Mr. ROGERS. No. That company would still be considered eligible except that at the local level we would probably not extend benefits to the firm.

Senator COHEN. Why?

Mr. ROGERS. Because we would think that on its face it is not eligible. I know it sounds conflicting, but that is precisely what we do if we find——

Senator COHEN. And why does not what Senator Levin asked you, really, that the case—that technically speaking it was in fact disqualified at that point and not when the decision was finally made in Washington by the Associate Administrator?

Mr. ROGERS. Because that firm could legally say that it is an 8(a) firm. The firm could legally say it is an 8(a) firm.

Senator COHEN. Could you then legally say they are disqualified?

Mr. ROGERS. We could not do it at the local level.

We could say at the local level that this firm's condition is such that we had to recommend to the National Office that it be removed from the 8(a) program for the following reasons.

Senator COHEN. And who would act on the recommendation?

Mr. ROGERS. The Associate Administrator.

Senator COHEN. The same person who had not made a determination as to whether or not they were disqualified?

Mr. ROGERS. Yes. And while it may be theoretically true, I have known of no case where a firm in that condition, the recommendation is made to Washington and it is delayed for an inordinate amount of time. I have known of no case like that.

Senator COHEN. Well, this case is a rather exceptional case in itself, isn't it?

Mr. ROGERS. That is correct, sir.

Senator COHEN. In terms of how it was treated, how much money it received?

Mr. ROGERS. It is an exceptional case.

Senator COHEN. Is there any reason to doubt that it would receive exceptional treatment even in that case of the—in other words, you said it would have been very exceptional, unusual for any firm to have gotten that kind of a delay or determination as to its 8(a) section status.

This firm got very exceptional treatment all the way along the line? It is a hypothetical——

Mr. ROGERS. There were some exceptional circumstances, Senator. The company did ask for a number of extensions at the local level which were granted. By local level I mean at the District level.

Senator COHEN. Why were they granted?

Mr. ROGERS. Because the request——

Senator COHEN. The FPPT extensions, for example, why were they granted in the first place? Was not there a determination that was made that without the extension the firm would collapse?

Mr. ROGERS. That is correct.

Senator COHEN. So now we have a situation in which an 8(a) firm is being kept on a sort of permanent welfare cycle, isn't it?

Mr. ROGERS. You could characterize it as such.

Senator COHEN. Well, the facts reveal that this firm was almost totally dependent on Section 8(a) funds for its existence.

Mr. ROGERS. At the time we made the extension determination, and that would have been January 1984, at that time the firm's workload consisted of approximately 95 percent 8(a). And it is true that that condition was the key factor in the determination of the extension request.

Senator COHEN. Was not there concern with an SBA that this was an inappropriate thing to do to continue to sustain a firm on Section 8(a) basis indefinitely into the future? I mean is this consistent——

Mr. ROGERS. Well, it was not indefinite. It was not indefinite. But there was concern and that issue was raised in the discussions.

I myself recall raising the issue. We raised the issue, as I said in my statement, regarding the economic disadvantage and the fact that John Mariotta had a substantial net worth as did Maria Moreno.

But, Senator, the question did not turn simply by considering one issue. Here is John Mariotta who four months before had to mortgage his house in order to meet the payroll of the company, and all of his staff took cuts in pay in order to meet the payroll, and who had been struggling to buy materials to move the engine contract along by borrowing from different banks who had refused him credit. And then, overnight, he was a multimillionaire, owning the substantial shares of stock of the Wedtech Corporation, but this corporation had, prior to that date, only done $6 million worth of work, had only maybe a year's worth of experience on the engine contract, had not passed first article on it, so the question was could he and his partners move to banking institutions and financial institutions and get the kind of working capital that he needed in order to continue this engine contract. And the determination was obviously a marginal one. It was a determination at that time that the firm was not in a position to stand on its own.

And we could have made a determination there and then that the company out of the 8(a) program despite the stock transaction. Had we done that, we think that the company would have gone under.

Senator COHEN. How many firms are you aware of that have 95 percent of their business dependent upon 8(a) contracts in the program?

Mr. ROGERS. I would think that if you would check the portfolio, you may find a few like that.

Senator COHEN. A few out of 2,200?

Mr. ROGERS. Oh, no. There are approximately 2,500 nationally.

Senator COHEN. Right.

Mr. ROGERS. And if you guess that 60 percent of them have received contracts——

Senator COHEN. No, no. I am talking about 95 percent of their business is with the Government through the 8(a) program.

Mr. ROGERS. Yes, I am getting to that.

Senator COHEN. All right.

Mr. ROGERS. Normally the firms that come into the 8(a) program are very small firms.

Senator COHEN. To get started?

Mr. ROGERS. To get started.

Senator COHEN. Right.

Mr. ROGERS. And with 1 or 2 years of experience with contracts, they may get to this point. And then there comes a big contract and that big contract may triple the volume that the firm had previously so they could very well wind up in the 80 or 90 percent, albeit for a temporary period of time. So that is altogether possible.

And I would say there are very few firms that are like that. But it has occurred, and it occurred before Wedtech, and I am sure it has occurred since that time.

Senator COHEN. Is there any sort of a policy developed within SBA to deal with firms who are overly dependent upon the 8(a) program?

Mr. ROGERS. That ought not be the case. And the policy is to try to keep a balanced mix between 8(a) and non-8(a) work.

As a matter of fact, I believe that there is a current emphasis on that in that many of the local offices have developed and put in place policies that if your firm does not show that it has developed a substantial amount of non-8(a) work that it will not get new 8(a) awards.

Senator COHEN. Was that policy in effect at the time the decision was made to extend Wedtech?

Mr. ROGERS. That policy was in effect.

Senator COHEN. So, in essence, we have got a life support system being extended to Wedtech from a period starting in 1981–1982—well, when they started getting the initial Army contract. Was that 1982?

Mr. ROGERS. That was 1982.

Senator COHEN. Right.

Mr. ROGERS. I would like to interject something, if I may, that I came to the SBA in 1981. And as I understood the history of that engine contract, it grew out of something called the pilot program that was intended to identify non-traditional kinds of requirements for 8(a) firms. Because until that time, or around 1981, 8(a) firms usually got janitorial jobs, they got the cleaning jobs, they got small construction jobs. And those are not the kinds of firms that continue to exist after graduation from the 8(a) program.

So it was felt that what we needed to have is manufacturing firm dealing in the non-traditional areas. And this contract, I believe, initially grew out of the pilot program even though the pilot program expired and then it went the normal route.

Senator COHEN. In response to Senator Levin about the audit question, you said that one of the reason the audit was not conducted is that the same condition of the firm would not have existed at the time of the completion of the contract?

Mr. ROGERS. I believe he asked why it was not conducted. Now, this is my opinion in retrospect, looking back with 20/20 hindsight.

There was no policy in effect at that time to conduct an audit of the firm because we were giving them a new requirement or a huge requirement. There was no policy in effect at that time. We did the normal financial review, which would be examining the last financial statements, and if we thought that those were a little too old, then we would ask for updated information. That was the policy that was in effect.

I said to the staff that in looking back at the matter, if we had in effect a policy that would say you are going to give a huge requirement to a firm that has not done this before, that you look thoroughly at the financial condition of that firm so that you know and you do not rely on merely a CPA statement. That is what I said to them basically.

Now, that was not done, I believe, because normally it was not the policy at the time to do an exhaustive review, but I think that ought to be something that we ought to consider for future events.

Senator COHEN. In your judgment, should public corporations ever qualify for the 8(a) program?

Mr. ROGERS. I would not like to see public corporations in the 8(a) program.

Senator COHEN. Do you have any other public corporations qualified?

Mr. ROGERS. Not in New York.

Senator COHEN. Are you aware of any on the national level?

Mr. ROGERS. And I do not believe there are any nationally.

Senator COHEN. Thank you.

Senator LEVIN. Let me go back to that so-called fixed program participation term which has been referred to. That is the period in which Wedtech is allowed to remain in the 8(a) program, and it was set to expire shortly after the company went public in October 1983, is that correct?

Mr. ROGERS. That was the initial term.

Senator LEVIN. The initial term was set to expire right after they went public?

Mr. ROGERS. But that setting took place at some time prior, and the public offering was not——

Senator LEVIN. Chronologically though, it was set to expire in October of 1983. Their eligibility was going to end, their participation term was going to end in October of 1983.

Mr. ROGERS. That is correct.

Senator LEVIN. And it is a chronological fact, a calendar fact that came shortly after they went public, is that correct?

Mr. ROGERS. That would be correct.

Senator LEVIN. Given the fact that at that moment when they went public, Wedtech was no longer minority owned and controlled as required by the 8(a) SBA regulation—given the fact that they did not notify the SBA of the fact they were going public, which you testified they were required to do—it was clearly ineligible for further 8(a) participation at that point.

Now, why did not the SBA just simply allow that term to run out and expire the way it would have done? Would not that have the simplest response to their actions, their actions being to go public without notifying you and to lose their minority ownership? Why not just let it expire?

Mr. ROGERS. I think we could have done that, Mr. Chairman, but I do not know that it would have been the responsible thing to do.

As two witnesses before mentioned, the company employed a number of people in the South Bronx. The company was at that time engaged in performing on the military engine. It seems that we could have done that, but I do not know that that would have the responsible thing to do.

Senator LEVIN. Well, one of the reasons that you decided to continue it was because they were so dependent on an 8(a) contract is that your testimony?

Mr. ROGERS. Yes.

Senator LEVIN. Which is exactly the opposite of the SBA policy, which is that overdependence on 8(a) work is grounds not to continue the program term—is not that true?

Mr. ROGERS. Overdependence is not a ground not to continue. It is a ground not to give any more support to the firm.

Senator LEVIN. Well, let me read you now your standard operating procedures.

Is it not true that those standard operating procedures state that the receipt of a large amount of 8(a) contract work and failure to develop non-8(a) business "will be a significant factor towards limiting a fixed program participation term and conditions thereof"?

Mr. ROGERS. That is correct.

Senator LEVIN. So the fact that they were overly dependent on 8(a) business should have pushed you towards not renewing or towards limiting the term. Instead, you testified that it was the reason that you decided to continue.

Mr. ROGERS. That was one of the reasons. There is a balancing of——

Senator LEVIN. Well, you said—if I can interrupt you—you said that it was a key factor, that is your testimony today, that it was a key factor.

Your regs say that overdependence is a reason not to extend, and you are saying here today that the overdependence or the dependence on 8(a) contracts was a key factor in your decision to extend.

Mr. ROGERS. Yes. I am saying, Mr. Chairman, that there were a number of issues that were raised, a number of considerations, and there was a balancing of those.

And I would agree with you that it was a marginal decision, one that could have gone the other way, and there was substantial argument for that side, to discontinue the firm immediately or to give it 2 months or 3 months.

But the overwhelming sentiment, as the record will show, was that, given everything that we had, that here was a firm that had somehow ballooned like that in a six-month period of time, and that was a bubble that could burst tomorrow if that firm were removed from the 8(a) program at that point.

Now, I must confess to you that all the revelations that are in the paper, that have been in the papers since early last year, had people in that room who had been discussing this, had they known about some of these events, we probably would have allowed the bubble to burst there and then.

Senator LEVIN. You did know a couple of events—there were some events you knew about and you were alerted to. One was they went public without telling you.

Mr. ROGERS. Yes.

Senator LEVIN. That much you knew.

Mr. ROGERS. That is correct.

Senator LEVIN. And you knew that at that moment they were no longer minority owned as they were required to be under the statute.

Now, there was something else that you knew, and that is that it would be better under these circumstances that they not get any more 8(a) contracts, is not that also true?

Mr. ROGERS. The last one I did not hear.

Senator LEVIN. Was not it also true that you felt that, under those circumstances, that they were overly dependent on 8(a) contracts, it would be better that they not be awarded any further 8(a) contracts?

Mr. ROGERS. That would normally be the situation.

Senator LEVIN. And is it not true that you told your staff that you thought that while they should be kept in the program, that you felt that they should not be awarded any more 8(a) contracts?

Mr. ROGERS. I did not make the statement that Wedtech should not have been awarded any more contracts. I simply said that that would normally be the case. If you have a firm that is overly dependent on 8(a) contracts, you find that condition, what you normally do at this time is to withhold new requirements until they can demonstrate that they have built up the non-8(a) work such that you have an adequate balance. Because after all, the goal of the program is not to give contracts but more to graduate a firm that can stand on both of its legs after it has graduated from the 8(a) program.

Senator LEVIN. That being your feeling in general about graduating from the 8(a) program and not being overly dependent on the 8(a) program, is there any reason why that general approach should not have been applied to Wedtech?

Mr. ROGERS. As I said, Senator, there was a balancing of all of the considerations. That was one of the considerations; that is, the fact that it was overloaded. The fact that they had a substantial net worth in Mariotta was also one of the considerations.

Then, we had a company which, until 1985, had a history of performing very well on Government contracts, doing sheet metal work, doing cooling kits, doing suspension kits for the Army, doing a lot of work for Western Electric and General Electric and a number of private sector firms, had received awards for its perfect performance on a number of contracts over the years. And so we had in the making, at least from my vantage point, an outstanding 8(a) contractor.

Senator LEVIN. Were you aware that at the time you were considering whether to extend their term, that they were being considered for the pontoon contract?

Mr. ROGERS. I was aware of that. As a matter of fact, I testified to the fact that I was on the selection committee.

Senator LEVIN. Was that factor, that they were going to be considered for that contract, considered by you in your decision or determination to extend their term?

Mr. ROGERS. No. That was not considered. It was not considered because I think it was not until January, or late January, 1984 that it was firmed up that in fact the Navy would award this pontoon contract.

Senator LEVIN. But you were aware in the Fall of 1983 that they were a candidate for that contract?

Mr. ROGERS. A candidate, Mr. Chairman, in the sense that the name was there and there was interest on the part of Wedtech. Now, I knew then that Wedtech had not done pontoons before, that there were other firms that had been closer to that kind of business and that they too were being considered.

Senator LEVIN. Let me just get the chronology straight. You were aware in the Fall of 1983 that they were a candidate for the pontoon contract.

Mr. ROGERS. That is correct.

Senator LEVIN. So when you made your decision to keep them eligible for SBA contracts, that came later. In the Fall of 1983. That came early in 1984; is that correct.

Mr. ROGERS. That is correct, Senator.

Senator LEVIN. So the timing there is——

Mr. ROGERS. Very compressed.

Senator LEVIN [continuing]. Pretty clear, the connection. Now, why did you not put a condition on their renewal that they not be so dependent on 8(a) contracts, since you were concerned about that, and since your requirements—your standard operating procedures—say that companies are not supposed to be overly dependent on 8(a) contracts? As a matter of fact, if they are, that is a ground for not keeping them in the program.

Why did you not make a condition of the extension that they reduce their dependency on 8(a) contracts?

Mr. ROGERS. It was not done.

Senator LEVIN. Why did you not add that as a condition of the extension of their eligibility?

Mr. ROGERS. Senator, if I may respectfully say so, you present the question as though it was my decision to include or not include something.

Senator LEVIN. Or recommend?

Mr. ROGERS. I do not recall recommending it and I do not recall anybody else recommending it. I know that if that were done today, that that would be the case.

Senator LEVIN. Whose decision was it to continue them in the 8(a) program?

Mr. ROGERS. The recommendation came from the District Office, was reviewed by our office—that is, the regional office—we concurred and forwarded it to the central office for approval, and it was approved in the central office.

Senator LEVIN. My time is up, again. Senator Cohen?

Senator COHEN. Mr. Rogers, do you accept that argument that was offered that even after the public offering of the stock that the financial structure of Wedtech was still so small it will be unable to compete against the larger contractors for these products?

Mr. ROGERS. Well, that argument, that issue, was tossed around by a number of us in the regional office and, as a matter of fact, it was discussed in the central office eventually. Given what I knew then of the condition of the firm prior to that stock offering, it was a firm that was deeply in debt. Now, raising $22 million is——

Senator COHEN. Why was it deeply in debt, by the way?

Mr. ROGERS. Well, it apparently had expended substantial sums in trying to get this engine contract in 1981 and in 1982.

Senator COHEN. How do you expend substantial sums to get a contract? Doing what?

Mr. ROGERS. Well, I have read in the papers that they hired a number of consultants to do that. But I know that the firm was in poor financial condition prior to the stock offering.

Senator COHEN. Did you inquire as to why they were in poor financial condition?

Mr. ROGERS. Well, they said to us that they had grown substantially from $2 million to $6 million in that year and that they needed to reorganize a number of their internal workings, their purchasing divisions. They needed to expand their plant. They needed to buy lots of machinery, because even the $3 million worth of BDE that the SBA granted the firm was not enough in order to tool it up for the engine contract and they had to demonstrate very clearly to the Army that they had the technical wherewithal in order to do that engine contract. They did not have any experience in that before.

Senator COHEN. Did you accept that at face value, what they said to you? Was an analysis not made?

Mr. ROGERS. There was an analysis.

Senator COHEN. Did the analysis show in support that their statements were correct?

Mr. ROGERS. It supported it. If we look back at the analysis now, I would say it was not in depth enough, but we had an independent firm go to the plant and examine and check on a number of the statements they made.

Senator COHEN. This was the firm that ultimately was bribed by the Wedtech people?

Mr. ROGERS. The firm that I know was called First Harlem Corporation, I believe, and I do not know whether the firm was bribed or not.

Senator COHEN. So as of 1983 they were in deep financial trouble at that point, before going public?

Mr. ROGERS. That is correct. We knew it because of the financial statements that had been given to us. We also knew it because of their relationship with us with respect to the advanced payments that we had been authorized to disburse to them. The vouchers that they submitted, a number of these vouchers we could not pay because they involved debts and obligations that were not associated with that contract.

Senator COHEN. Were they using their advance payments to pay for things that were unrelated to the existing contracts?

Mr. ROGERS. They tried to, sir.

Senator COHEN. They tried to?

Mr. ROGERS. Yes.

Senator COHEN. So you have got a firm that is in deep financial and, I assume, managerial trouble at that point, 1983. They go public. The question I asked before, do you accept the argument that their financial structure was such, even after raising $137 million—how much was it they raised?

Mr. ROGERS. I understood it to be about $22 million. That first stock offering.

Senator COHEN. So roughly the $22 million plus $8 million of insiders stock; about $30 million?

Mr. ROGERS. I understood it to be $22 million, net.

Senator COHEN. It was about $30 million total with the insiders selling their stock.

So you have $30 million, but at that point they say, even with the $30 million we are still too small to compete with the other firms, therefore, disregard the fact that we have gone public; is that the argument they made?

Mr. ROGERS. Well, I do not think they said, disregard it. They said that your test of economic disadvantage is whether we can raise the kinds of credit and capital necessary to operate a company of this size. Based on what we had seen to date—to that date—we concluded that on balance they needed some extra time. If you combine the inexperience in raising capital, other than the stock offering, could they go and get a line of credit for $10 million? That, based on the information that we had at the time, did not seem likely.

But it did raise questions and it was discussed.

Senator COHEN. Well, if I can move away from Wedtech just for a moment, it raises the policy questions that we have to consider here about the future of the program. Namely, Mr. Templeman, I think, indicated before that perhaps we should never find ourselves in the position under Section 8(a) of granting large amounts of money to firms pursuant to this program. I think the indication was roughly the average was about $100,000 up to that point that went to any given firm, and suddenly you had millions of dollars going into one small company and they ballooned into something much larger than they were.

So you then have a situation where a large contract distorts the financial structure of the firm to the point where we find it is too small to compete but it is too big to let fail. And then you keep it on the life support system. You are unwilling to pull the plug, because you know if you pull the plug, this firm is 95 percent dependent upon these contracts and hundreds of people are thrown out into the streets, and therefore, the life support system stays in, stays plugged in for 3 more years.

So we find ourselves where the system or the program itself, the policy objectives are, in fact, distorted, because we moved away from the small firms, allowing them to get in at a smaller level, to grow if they can, by mixing commercial and Government contracts, to the point where they can stand on their own two feet.

We put them on their feet with a multi-million dollar program and the point that they could not stand on those feet without being plugged into the life support system, and that is what happened here.

Mr. ROGERS. I think our experience, Senator, has shown that that is the case and that the policy ought to be changed. As a matter of fact, in the New York regional office, since last year we have put into effect a policy to try to lower the average of the 8(a) contracts that are awarded to firms, because our experience last year, ending September 30th showed that the average award in

New York was $892,000. We think that that ought to be much lower, given the size of small firms.

Senator Cohen. Thank you very much.

Senator Levin. Senator Bumpers.

Senator Bumpers. Just a couple of short questions, Mr. Chairman.

Mr. Rogers, did you look at any of the documents provided by Wedtech's lawyers where they provided SBA with a defense for staying in the 8(a) program? [1]

Mr. Rogers. Yes, we did look at them.

Senator Bumpers. Did you look at them yourself?

Mr. Rogers. Yes, I did.

Senator Bumpers. You saw the counsel—is it David Elbaum?

Mr. Rogers. Yes.

Senator Bumpers. You saw his opinion on it? [2]

Mr. Rogers. That is correct.

Senator Bumpers. In which he said that he had looked over two legal firm opinions and thought that that was sufficient to qualify them in the program. Was his opinion submitted to the regional counsel, or do you know?

Mr. Rogers. As I recall it now, his opinion was submitted to the regional administrator because the regional counsel was not in the office at the time.

Senator Bumpers. One of the opinions he recites, of course, is from Biaggi & Ehrlich. Did you see their opinion as well as his? [3]

Mr. Rogers. I saw their opinion and that opinion was rejected on the first review because we were aware that Biaggi & Ehrlich was counsel for Wedtech, number 1. We were further aware of the fact that Biaggi & Ehrlich had by that time become part owners of Wedtech Corporation.

Senator Bumpers. You have anticipated my next question. Did you know at that time that Biaggi & Ehrlich were stockholders in the company?

Mr. Rogers. Yes, we did. We knew that because it was part of the public offering, I believe.

Senator Bumpers. Did anybody raise the question about the validity of legal opinion from the firm who were owners of the company?

Mr. Rogers. That was raised by counsel David Elbaum himself.

Senator Bumpers. It was not raised in the letter that I am looking at. This says,

> I reviewed the various stock purchase agreements and escrow agreements covering the transfer of stock to John Mariotta. In addition, I reviewed the memorandum of law submitted by the law firm of Biaggi & Ehrlich covering the validity of the transfer under New York law with regard to consideration and conformity to the Uniform Commercial Code.[4]

I do not find anything in here to show that he knew that they had stock in the company at the time or the propriety of SBA accepting an opinion of a law firm, the principal partners of whom were shareholders in the company.

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[1] See pp. 329-357.

[2] See p. 363.

[3] See p. 357.

[4] See p. 363.

Mr. ROGERS. I state that because there were meetings that preceded his writing that memorandum. At one of those meetings that I attended in an acting capacity—I was not then Deputy Regional Administrator, I was at that time Deputy Assistant Regional Administrator, there are a number of titles in SBA—and I recall being at the meeting at which Mr. Elbaum was present and his saying that we simply cannot accept an opinion from Biaggi & Ehrlich standing alone, for two reasons. One, counsel for the firm; secondly, they were owners as per the stock offering.

So while it may not be written in a memorandum, I am stating that on the basis of discussion where I was present, it was at that time decided that other counsel would be invited to pass upon the validity of the stock transfer documents. I do not know how the name Squadron was selected, but that is the firm that was invited to offer an additional opinion. [1]

Senator BUMPERS. Did you know at that time that Squadron, Ellenoff also owned stock in the company?

Mr. ROGERS. I did not.

Senator BUMPERS. You did not?

Mr. ROGERS. I did not at the time.

Senator BUMPERS. And he did not raise their name?

Mr. ROGERS. Apparently not.

Senator BUMPERS. Only Biaggi & Ehrlich?

Mr. ROGERS. Biaggi & Ehrlich, initially, right. I was remarking recently that that completely slipped me. I was unaware of it.

Senator BUMPERS. Do you recall anybody raising a question about why Mr. Elbaum would say at a meeting that he could not accept an opinion from them because they were stockholders in the company, and then subsequently write a decision in which he says I am accepting their opinions?

Mr. ROGERS. Well, I think what he was—I think the tenor of that memorandum—it suggests to me that he had considered all of the documents that had been presented to him. In other words, it is comprehensive and it is not excluding anything that he had considered. You know, he could have written the memorandum, which is to say, I considered the memorandum from Squadron, but that would be half the story. So he simply said, I considered everything.

Senator BUMPERS. This is really strange. You have two legal opinions here. Wedtech is trying desperately to stay in the 8(a) program. SBA is trying to cut them off. You have meetings in which this problem is discussed. Mr. Elbaum says, I cannot accept any opinions from Biaggi & Ehrlich because they are stockholders, and then pursuant to that, on January 5th, 1984, he writes a legal opinion to Mr. Rose, who is yet to testify, saying, I have reviewed those opinions from those two law firms and after reviewing them, it is my considered opinion that all of the agreements are valid, binding and enforceable.

Do you not find that rather strange?

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[1] See pp. 324, 326.

Mr. ROGERS. Well, if I were looking at that document alone, I would. But the firm of Squadron, Ellenoff, they were the ones who had sponsored this stock offering. While I am not sure how Mr. Elbaum viewed the matter, and I would leave that to him, it seems to me that there was reliance on the fact that here was a firm that was dealing with the SEC, had, in fact, shepherded this offering through that body, and therefore with a long list of credits to its name, that it would render an opinion that could stand the test of time.

Senator BUMPERS. Did you personally look at the registration statement of Wedtech on their $33 million offering?[1]

Mr. ROGERS. I read it.

Senator BUMPERS. You read it?

Mr. ROGERS. Yes.

Senator BUMPERS. Do you remember seeing in there that—you mentioned a moment ago that you did not know they were stockholders, and yet this statement here says:

> The legality of the securities being offered hereby is being passed upon for the company by Squadron, Ellenoff, Plesent and Lehrer, and they will pass upon certain legal matters for the underwriters. Squadron, Ellenoff, Plesent and Lehrer own 45,000 shares of common stock of the company, which shares were acquired from the company for nominal consideration.[2]

Mr. ROGERS. Yes.

Senator BUMPERS. There it is, in bold black print. And Mr. Elbaum, you say he did not know it and you did not know it, and yet here it is in the prospectus.

Mr. ROGERS. Senator, I am not saying Mr. Elbaum did not know it. I would leave that for him to say.

Senator BUMPERS. You are saying he just raised the question of Biaggi & Ehrlich?

Mr. ROGERS. That is correct.

Senator BUMPERS. And not these?

Mr. ROGERS. And not Squadron. I must say that I read that document and I probably saw that, but what I am saying is that that was not within my thinking at the time that this issue was discussed.

Senator BUMPERS. These prospectuses that are written for public offerings, I must admit, I have looked at a lot of them and I would hate for somebody to confront me with a piece of fine print. But when you are acting on legal opinions from people in a situation like this where it is obvious, or it should have been obvious, that these people were all stockholders, and yet you have two legal opinions on which Mr. Elbaum is relying to say, well, we believe they ought to stay in the 8(a) program and we believe this agreement to purchase stock by Mr. Mariotta is in compliance with all the SEC rules and regulations, and I am relying on these two opinions, and he never mentions it one time in his opinion.

I am not holding you accountable for what Mr. Elbaum said in the legal opinion, but he never mentions one time in here the fact that these people who are writing these opinions and saying this is just hunky-dory, are also big stockholders who have a big financial stake in this company.

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[1] See p. 277.

[2] See p. 289.

Then he goes on to say, after reviewing all of the above, it is my considered opinion that everything is just lovely and they ought to stay in the 8(a) program. My God, that is a strange set of circumstances.

I have no further questions, Mr. Chairman.

Senator LEVIN. There are a number of questions that we will be confronting Mr. Elbaum with tomorrow, but since we are on that subject now, I just want to ask you one more question along that line. It is even, in a way, worse, because whether or not Squadron was known to you to be a stockholder, he was known to you to be an attorney for Wedtech.

Mr. ROGERS. I do not believe I ever met Mr. Squadron.

Senator LEVIN. But you were aware of the fact that he was Wedtech's attorney, were you not, at that time?

Mr. ROGERS. I was aware at the time that his firm——

Senator LEVIN. Was invited to render an opinion.

Mr. ROGERS [continuing]. Was invited and had in fact shepherded that stock offering.

Senator LEVIN. Who invited that firm to render that opinion? Because you did not trust Biaggi's firm because they were stockholders.

Mr. ROGERS. Yes. I do not know who was personally responsible for selecting the Squadron firm.

Senator LEVIN. Well, you had a meeting, you said, where you just could not accept the Biaggi opinion because they are stockholders and you decided you wanted to invite somebody else. Who was at that meeting?

Mr. ROGERS. I can only recall three people, but there were more than three, and those three were myself, Mr. Elbaum and Mr. Neglia.

Senator LEVIN. Mr. Neglia?

Mr. ROGERS. Mr. Neglia, right.

Senator LEVIN. That meeting would have taken place sometime before January of 1984; is that correct?

Mr. ROGERS. That is correct.

Senator LEVIN. When would it have taken place?

Mr. ROGERS. Late December. I was acting for Mr. Rose at that time.

Senator LEVIN. Now, at that meeting you said, we cannot accept the Biaggi firm opinion because they, number 1, represent Wedtech, and number 2, they are owners of Wedtech.

Mr. ROGERS. Yes.

Senator LEVIN. But it was clearly known that the Squadron firm represented Wedtech. Even if you overlooked the prospectus which said they owned part of Wedtech, you surely knew they represented Wedtech. How in the name of heaven would you invite a firm to give you an objective independent bit of advice on the legality of a transfer when you knew that firm represented the company that was arguing for the legality of it?

Mr. ROGERS. Senator, there had been a long course of dealings between Biaggi & Ehrlich and Wedtech Corporation, a long course of dealing in which all of the people involved in the 8(a) program in New York—that is, who dealt with Wedtech—knew about.

It would have seemed highly inappropriate—it was highly inappropriate to me at the time—that we could rely on a statement from that firm attesting to the validity of a transfer which not only involved Biaggi & Ehrlich as owners, but either Biaggi or Ehrlich as one of the person, the parties involved in the transfer, because there was some stock that had been transferred from either Biaggi or Ehrlich to John Mariotta.

Senator LEVIN. Mr. Rogers, you have testified there were two reasons that you could not accept the Biaggi opinion. One was that they represented that firm.

Mr. ROGERS. Yes.

Senator LEVIN. Two was, they were owners. I am saying to you that you did know that Squadron represented Wedtech. You knew that, did you not?

Mr. ROGERS. I do not think that that came to—I am saying that I——

Senator LEVIN. No, no. In December. At that December were you not all aware that the Squadron firm represented Wedtech?

Mr. ROGERS. I am saying that nobody raised that issue.

Senator LEVIN. But someone at that meeting decided to invite the Squadron firm; right?

Mr. ROGERS. I did not say that. I said it was decided to invite another firm.

Senator LEVIN. At that meeting?

Mr. ROGERS. At that meeting. The name of the firm was not disclosed to me at the meeting. I did not know that it would be the firm of Squadron.

Senator LEVIN. Who decided then, after that?

Mr. ROGERS. I am assuming that either Mr. Elbaum or Mr. Neglia or both of them combined decided to do that, because Mr. Elbaum was responsible for rendering an opinion. It was his responsibility to render a legal opinion as to the validity of the transfer; was it a bona fide transfer?

The discussion as to accepting an opinion from Biaggi & Ehrlich, that discussion did take place and there was a conclusion that that alone could not be accepted and we needed another opinion.

Senator LEVIN. Would it not make equally good sense then to avoid asking an opinion from somebody who represented the Wedtech firm? By the same reasoning that the Biaggi opinion was not adequate to rely on, would it not have made good sense if you were going to invite some law firm to render an opinion, to invite a law firm that did not represent Wedtech?

Mr. ROGERS. It makes good sense to me.

Senator BUMPERS. And were not also stockholders.

Senator LEVIN. By the way, Squadron was also a stockholder, as Senator Bumpers pointed out.

Mr. ROGERS. Yes.

Senator LEVIN. Even if you were not aware of that, which I think should have jumped out at you from the prospectus since the prospectus on page 1—not fine print, may I say—but right on page 1 on the cover of the prospectus, says the copy would be going to the Squadron, Ellenoff firm. So they were pretty obvious here.

But the point I want just to pin down right here is that at that December meeting, when it was decided not to accept the Biaggi opinion, there were two grounds given at that meeting at which Neglia and Elbaum were at least present. There were two reasons. One was the fact that Wedtech was represented by Biaggi, and the second one was that the Biaggi firm owned stock in Wedtech; is that correct.

Mr. ROGERS. That is correct.

Senator BUMPERS. So they said, we have got to have somebody else, let's find somebody who represents them and is a shareholder.

Senator LEVIN. And they went out and did exactly the same thing. And, by the way, this Squadron letter starts off in their letter by saying: "We are counsel to the Wedtech Corporation."

That is the first line in their letter: "We are counsel to Wedtech."

Now, it obviously was not hidden. Did you see that Squadron letter?

Mr. ROGERS. Yes, I did.

Senator LEVIN. Well, when you saw that they were counsel to Wedtech, did not that bother you, since one of the reasons you rejected the Biaggi firm opinion was because they represented Wedtech. Did that not trouble you when you read that line, "We are counsel to Wedtech"?

Mr. ROGERS. Senator, you characterize it as, "you" reject it.

Senator LEVIN. No. Were you troubled by it when you saw that?

Mr. ROGERS. I think that I relied more on the memorandum from our District Counsel in terms of forming my own opinion. I was a member of the discussion group. I was there because of my experience in the programmatic side. Mr. Elbaum was there because of his experience on the legal side. And so I would look to him as the person to form an opinion, unless it was, in fact, an outrageous kind of opinion.

In this case, he had done his own research, he had relied on the opinion of counsel from two different sources, albeit one was not what it should be, and the other one—I read that letter, but I was looking to see not who wrote it so much as did it say that this was a bona fide transaction.

Senator LEVIN. Well, now, as a matter of fact, that letter did not even address the issue of whether it was a bona fide transaction, did it? Was not that letter addressed to the question of whether or not it complied with the SEC laws?

Mr. ROGERS. Complied with the SEC rules. I think that that was the concern, but Mr. Elbaum himself did state that he did not have a substantial experience in dealing with the SEC and was not thoroughly aware of all of the rules involved.

Senator LEVIN. As I understand it, there were two concerns; one was, was it a bona fide transaction in any event.

Mr. ROGERS. That was in compliance with the SEC.

Senator LEVIN. Was there one question or two that you talked about at that December meeting? One was whether it was a bona fide transaction, and two, assuming that it was, did it comply with the SEC rules.

Mr. ROGERS. I think that was a concern also.

Senator LEVIN. All right.

Now, you have indicated to our staff that you doubted the ability of any one 8(a) company to handle the pontoon contract, that it was your desire that that contract be split up among a number of companies; is that correct?

Mr. ROGERS. No. I think I said that the intent was to get a pontoon requirement that would be split up among a number of 8(a) firms. That was the original intent.

Senator LEVIN. Were you worried that Wedtech would lose money on the pontoon contract?

Mr. ROGERS. Yes, we were.

Senator LEVIN. And that that would make it difficult for them to perform?

Mr. ROGERS. Yes. We were worried about that.

Senator LEVIN. Was, in part, the reason for that doubt, because it was going to them all by their lonesome, that it would have been better if it were split up among a number of companies?

Mr. ROGERS. No. I think that it would have cost the Government much more to do it by splitting it up.

Senator LEVIN. All right.

Mr. ROGERS. But I think our worry was that Wedtech's figures that they had provided us during the negotiation process substantiated costs that they would have incurred and that the Navy was paying little credence to those costs and basing their estimates on other histories that were not up to date in my view.

Senator LEVIN. So you did not state to our staff that you doubted the ability of any one 8(a) company to handle that pontoon contract.

Mr. ROGERS. I did not state that.

Senator LEVIN. You did not tell our staff that you wanted it split up?

Mr. ROGERS. I did not tell them I wanted it split up. I said that the idea was to have several 8(a) contractors do the job.

Senator LEVIN. Did you state to our staff that since Wedtech was already over-dependent on 8(a) contract support that it was a bad idea to give the company another large contract?

Mr. ROGERS. In looking back at it, it was a bad idea.

Senator LEVIN. But you did not feel that at the time?

Mr. ROGERS. No, I did not.

Senator LEVIN. Did you also tell the Subcommittee staff that this was the first time that you ever met anybody with a million bucks, referring, I presume, to the owners of Wedtech?

Mr. ROGERS. I believe that that is the first time I ever met several people with a million bucks; yes, that is correct.

Senator LEVIN. That was the first time you were providing SBA support to somebody who had a million bucks; is that a fair statement?

Mr. ROGERS. I think that is correct.

Senator LEVIN. Did that create some doubts in your mind?

Mr. ROGERS. Well, it always raises doubts if you find someone with a substantial net worth in the 8(a) program and that occurred to me prior to Wedtech where we encountered people who were either applying for 8(a) status or were already in the 8(a) program and wanted to get an extension and in fact had a substantial net worth.

Senator LEVIN. Is it fair to say you had a number of doubts at this time about whether to continue Wedtech in the program?

Mr. ROGERS. I think most people who discussed the matter had doubts, Senator.

Senator LEVIN. And you were included in that?

Mr. ROGERS. Included, that is correct.

Senator LEVIN. And included in those doubts were the over-dependence of the company on the 8(a) program? I am going to give you a list and then you can just tell me which were true.

One of the doubts was the over-dependence on the 8(a) contract and your regulations requiring that you not be supportive of continuing 8(a) assistance to companies which are over-dependent. Number 2 is the fact that they went public, that was a doubt. Number 3 is the fact that you were never notified of the fact properly that they went public. And number 4 was the fact that you had somebody here with a net worth of over a million dollars.

Those were some of the doubts that you had; is that a fair statement?

Mr. ROGERS. That is a fair statement, and I would say that all of those issues were discussed by several people.

Senator LEVIN. And those doubts were overcome by other factors?

Mr. ROGERS. That is correct. When you balanced all of the information we had, we came down on the side to continue the firm.

Senator LEVIN. Just one more question, Mr. Rogers. Did you have any discussions with Mr. Elbaum or with Mr. Neglia following the receipt of the January 4th and 5th memos from Squadron, Ellenoff and from Mr. Elbaum relative to the transfer of the stock? Did you have any discussions following that?

Mr. ROGERS. Yes. There was a meeting. I do not recall the exact date, but subsequent to his receipt of the Squadron letter and his rendering an opinion, he presented that to Mr. Neglia and whoever the other parties were, including myself. We discussed it a bit and he said that is his opinion.

Senator LEVIN. Did the question of Squadron being both the attorney for Wedtech——

Mr. ROGERS. That did not come up.

Senator LEVIN. If I could just finish my question.

Mr. ROGERS. I am sorry.

Senator LEVIN. Did the question of the Squadron firm being both the attorney for Wedtech and a stockholder in Wedtech ever come up in conversations between you and Elbaum or you and Neglia or you and anybody else in the SBA?

Mr. ROGERS. To my recollection, it did not come up, not immediately following that. But I know that there was an inquiry——

Senator LEVIN. Well, did it come up at all, I said. I did not limit it to immediately following that.

Did that fact, that you rejected firm A's opinion because they were owners and attorneys for a company, and then invited firm B and accepted their opinion, although they were also owners and attorneys for the company—did that fact ever come up in a conversation with you and anybody else at the SBA?

Mr. ROGERS. Well, with Mr. Rose and myself. We have been reviewing this whole episode since the revelations in the paper early last year and trying to draw from it lessons that we could apply in revamping the program and in recommending policy changes. Until, I suspect, late 1985 it was our opinion that we should have more Wedtechs created in all of the high unemployment cities of this country and that there were good lessons to be learned from Wedtech.

But after the revelations in the paper we were looking back at this and seeing what went wrong and what role SBA had to play in it, what things we could have looked at, what were some of the "red flags" that should have come to our attention and did not.

This matter did come up, how come that we missed that. Maybe had Mr. Rose been at the meeting, he would have caught it.

Senator LEVIN. Mr. Rogers, just a process question here about your testimony. How was your testimony prepared? Was this typed in Washington or in your own office in New York, or what?

Mr. ROGERS. This is substantially my text. I am attending a course right now and I prepared it and it was forwarded to Washington to the Congressional office, and I understand that that is a standard procedure. But the text is not substantially different.

Senator LEVIN. Then they typed it up here?

Mr. ROGERS. They typed it up there.

Senator LEVIN. They did not make any substantial changes?

Mr. ROGERS. No substantive changes.

Senator LEVIN. Thank you for testifying here this morning. We will be getting you additional questions for the record, as we will all our other witnesses.

Mr. ROGERS. Thank you very much, Senator.

Senator LEVIN. Our next witness is Mr. Edric Rose.

Mr. Rose, would you raise your right hand? Do you swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. ROSE. I do.

Senator LEVIN. Mr. Rose, we have your testimony and we have read your testimony, so we will make it a part of the record in its entirety. If you would like to, you could summarize it; but we would ask that you not read the entire testimony because I have already read it and copies were made available to the public, and there is no other member here of the subcommittee that has not read it, obviously, since there is no other member here. So you can proceed as you wish, but I would request that you either summarize it or let us put the entire testimony in the record.

Mr. ROSE. Well, why don't you put the entire testimony in the record? [1]

Senator LEVIN. And that way we could proceed to questions.

TESTIMONY OF EDRIC ROSE, ASSISTANT REGIONAL ADMINISTRATOR FOR MINORITY SMALL BUSINESS, U.S. SMALL BUSINESS ADMINISTRATION, NEW YORK, NY

Senator LEVIN. Would you pronounce your first name, so we don't mispronounce it?

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[1] See p. 203.

Mr. Rose. I don't know if you have the copy that I have got. The name is Edric—E-d-r-i-c. That "e" should be taken off, the "e" at the end.

Senator Levin. How did the "e" get added? Pardon?

Mr. Rose. The typist, I guess.

Senator Levin. In Washington or in New York or where?

Mr. Rose. Probably in Washington. They recopied what we sent down to put it in the proper format.

Senator Levin. All right. But it is Edric?

Mr. Rose. Yes. And again on page 12, question number 5, there is again a mistake. It is the "role" of political pressure, not the "note" of political pressure.

Senator Levin. That is page?

Mr. Rose. Page 12.

Senator Levin. 12.

Mr. Rose. Question 5, or response to your question number 5.

Senator Levin. All right. Any other changes that you would like to make in that testimony? Are there any other changes beside the spelling of your first name and the word "role" instead of "note" on page 12 that you would like to make?

Mr. Rose. Not that I have noticed.

Senator Levin. Were there any substantial changes made in your testimony by the Washington office after you submitted it to them?

Mr. Rose. From what I have read—in fact, I have the actual thing I submitted—no, there has been no substantial change.

Senator Levin. Mr. Rose, on January 4, 1984, Wedtech submitted a private stock transaction to the SBA for approval.[1] This transaction has been entered into for the express purpose of regaining 8(a) eligibility. Wedtech contended that the private transaction gave Mr. Mariotta ownership of 55 percent of Wedtech stock, which would be enough to meet the 8(a) requirement that a company be minority owned.

However, the agreement made it clear that Mr. Mariotta had not paid for the stock and would not be required to do so for at least two years.

Now you referred this package to the New York District Office and on that very same day, January 4, the Acting Director, Merv Shorr, sent you a three-sentence letter recommending a 3-year program extension without addressing any of the issues which had been raised about Wedtech's eligibility.[2]

On the very next day, January 5, the District Counsel, David Elbaum, sent you a letter in which he laid out the documents he had received and stated, also in three sentences, that John Mariotta had sufficient controlling interest in Wedtech to merit continued 8(a) eligibility. And both those letters are in the record.[3]

Now were you concerned that this 1-day review at the District Office might have been superficial?

Mr. Rose. Mr. Chairman, this was the culmination of a series of examinations of data that had been submitted over a month. Actually, the first presentation that was submitted to SBA was dated December the 12th, from the law firm of Biaggi & Ehrlich.[1]

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[1] See pp. 329–357.

[2] See p. 362.

[3] See p. 363.

We examined that, and I don't remember the details concerning the meetings that we might have had. However, on the 20th of December——

Senator LEVIN. Twenty?

Mr. ROSE. 20th of December—there was another submission by the firm in support of the previous information that was provided.[2] On the 27th of December, we sent a letter to the company advising them that the information that we had had earlier needed some more supporting documentation,[3] and the data that came in on the 4th of January was, or included that additional data that was requested.[4] So that this was not the result of a 1-day examination of data that had come in, but it was the result of a series of information packages submitted which had been examined, and so by the time that information came in on January 4, we more or less had had a pretty good concept of what was contained in the overall package.

Senator LEVIN. Well, you may have known what was contained in it but you surely had not had a chance to consider those legal memoranda or the transactions themselves. As a matter of fact, didn't they come in, those actual transfers come in on January 4?

Mr. ROSE. I don't remember all the details, but if we look at the package that came in on the 20th and on the 12th, we might have answers to that. I don't have access to those things, so I'm not quite sure what was in all of those packages. But I do know that——

Senator LEVIN. When you say you don't have access, why don't you have access to them?

Mr. ROSE. Well, they are all with the U.S. Attorney's Office and I really didn't examine them again.

Senator LEVIN. Well, January 4 Biaggi and Ehrlich wrote a letter to the Regional Administrator enclosing certain documents.

Mr. ROSE. I agree.

Senator LEVIN. Pardon?

Mr. ROSE. Yes, I agree.

Senator LEVIN. Included in those documents were stock purchase agreements, and included in that letter for the first time was the escrow agreements.[5]

Mr. ROSE. Well, I am not sure that that was for the first time. That is what I am not sure of. I would have to go back to the January 12th and to the December 12th and December 20th data to confirm that. I am not sure that they didn't put everything together in that January 4th package, but we would have to look at the previous data.

Senator LEVIN. The agreements weren't even signed before then.

Mr. ROSE. I beg your pardon.

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[1] See p. 296.
[2] See p. 308.
[3] See p. 322.
[4] See pp. 329–357.
[5] See pp. 331–350.

Senator Levin. The stock agreements, the stock purchase agreements and the escrow agreements had not been prepared prior to your meeting in late December by their own terms.

Mr. Rose. Um-hum.

Senator Levin. Now assume with me, if you would, just for the sake of discussion, that the first time that SBA saw those stock purchase agreements and the escrow agreements was on January 4th.

Mr. Rose. All right.

Senator Levin. Just assume that with me, and that is what the correspondence shows. Would it not trouble you that those documents were given no more than 24-hour review by the SBA?

Mr. Rose. Well, again, as I say, because of all the previous information that we had had and because, secondly, I think it had become important that we finish this process because it had been dragging out for such a long time, I would believe that probably the District Counsel devoted the whole day to completing the review. This was not new data.

Senator Levin. I want you to assume with me that——

Mr. Rose. Well, I am assuming with you. But, on the other hand——

Senator Levin. He says it is not new data. That surely was new data by my assumption.

Mr. Rose. All right. I am assuming along with you, however, I do have—I am not quite sure that these are the facts. If we assume that this is so, and if we further assume that the District Counsel devoted his full time to reviewing that in order to get the data up to us by January the 5th, then I would not think it unusual.

Senator Levin. Not January the 5th, January the 4th. Shorr wrote his memo the same day he got the data.

Mr. Rose. Well, maybe. I don't know what time of the day that was.

Senator Levin. Now this issue had been in your office for quite some months.

Mr. Rose. Well, the information that I acted upon was, in fact, the District Counsel's presentation to me which came up on January the 5th.

Senator Levin. But my question is a little different. This issue of the term running out on Wedtech and whether or not there had been loss of minority control in Wedtech had been in your office for many, many months, had it not?

Mr. Rose. Not in my office. In the District——

Senator Levin. Had been in the SBA offices for many months?

Mr. Rose. In the District for many months, right.

Senator Levin. And then the question had been raised about the transfer following a public sale, is that not true?

Mr. Rose. Yes.

Senator Levin. And that public sale bothered some people in SBA, didn't it?

Mr. Rose. It bothered everybody. Nobody was quite sure, you know, how to accept it.

Senator Levin. Sure. It bothered everybody, as it should have. And questions were raised about that sale.

Mr. Rose. Yes, sir.

Senator LEVIN. And then the legal mechanism to try to overcome that public sale and the resulting loss of control by minority owners was submitted, by my hypothesis, to the SBA on January 4?

Mr. ROSE. Okay.

Senator LEVIN. And on January 4th it was approved by SBA.

Mr. ROSE. Well, again, I don't know what time of the day. I would say that if they had spent the whole day examining that they ought to have been able to come up with some kind of a response on the evening because it was not a brand-new thing, no.

Senator LEVIN. What was brand-new were the details of the stock purchase agreement, isn't that true?

Mr. ROSE. Yes. Yes, Mr. Chairman.

Senator LEVIN. What was brand-new were the details of the escrow agreement, isn't that true?

Mr. ROSE. I would—yes. In your assumption, yes.

Senator LEVIN. As far as you know, no 8(a) company had ever attempted a stock transaction of this kind before, had they?

Mr. ROSE. Not that I can remember, no.

Senator LEVIN. So that was new. This was a whole new approach to stock transactions as far as you were concerned, wasn't it? You had never seen anything like this before, had you?

Mr. ROSE. You mean a sale such as this?

Senator LEVIN. Yes.

Mr. ROSE. A stock transfer?

Senator LEVIN. Yes.

Mr. ROSE. Not that I can recall, no.

Senator LEVIN. So it was all new.

Now, on the same day that you received—well, let me go back just one bit.

Did you discuss the so-called "sale" with Mr. Elbaum?

Mr. ROSE. We had meetings on it. I really don't remember all the details, but this was something that we had been talking about for I guess a month.

Senator LEVIN. Why was Mr. Elbaum's memorandum addressed to you rather than to his own District Director, do you know?

Mr. ROSE. I am not quite sure if Mr. Elbaum was Acting District Director at the time or not. I know he had been from time to time the Acting District Director. It might have been that he was.

Senator LEVIN. No. Shorr's letter——

Mr. ROSE. Shorr was the Acting?

Senator LEVIN. Acting District Director.

Mr. ROSE. Well, okay. I really don't know.

Senator LEVIN. So do you know why, then, Elbaum's memorandum was addressed to you rather than to his own District Director?

Mr. ROSE. Not really. I can't really think of a reason.

Senator LEVIN. And did you check with your Regional Counsel, Mr. Matthews, to make sure that he agreed with Elbaum's opinion?

Mr. ROSE. Well, to the best of my recollection, Mr. Matthews was not in the office. To the best of my knowledge, but I really don't recall. The fact of the matter is that when I prepare my recommendations and the normal procedure in the regional office is that I make a recommendation to the Regional Administrator. The Regional Administrator generally has that information pass through his Counsel. So that I don't do it before it goes to Counsel—I mean, I don't do it after it goes to Counsel.

In other words, the procedure is it comes to me, I look at it and make some kind of a judgment, prepare a memo of recommendation, and I usually also prepare the letter from the regional office to Washington. Then we send it on, and it is usually passed through Regional Counsel before it goes to the—you know, before the final decision is made by the Regional Administrator.

Senator LEVIN. In any event, you did not check with your Regional Counsel, Mr. Matthews?

Mr. ROSE. No. I don't usually do that.

Senator LEVIN. You don't usually do that?

Mr. ROSE. No. That is not the procedure in the office.

Senator LEVIN. Well, you said he was out of the office and that is why——

Mr. ROSE. Well, I say he might have been. I don't recall. But I am saying that I don't usually do it. I make a recommendation to the Regional Administrator. Before the Regional Administrator makes a decision, he passes it through Regional Counsel. That is the normal procedure in the office.

Senator LEVIN. So it had nothing to do with Matthews not being there.

Mr. ROSE. Well, I really don't know. I say he might not have been there.

Senator LEVIN. Well, what is the relevance of that, if that is not the purpose?

Mr. ROSE. For my purposes, Mr. Chairman, for my purposes I do not pass it through Regional Counsel before I make a recommendation.

Senator LEVIN. Whether he is there or not.

Mr. ROSE. Whether he is there or not.

Senator LEVIN. So what was the relevance of whether he was there? Why did you say that that——

Mr. ROSE. Well, I am sorry I said that.

Senator LEVIN. Now, in a case where you are relying on District Counsel's opinion, wouldn't it be normal for you to check with your own Regional Counsel?

Mr. ROSE. It is normal for the Regional Administrator to check with Counsel after I make a recommendation to him.

Senator LEVIN. All right. On the same day that you received the letters from Mr. Shorr and Mr. Elbaum, you signed a letter in which you concluded that Wedtech remained eligible for 8(a) participation; is that correct?

Mr. ROSE. Yes.

Senator LEVIN. And at approximately the same time, you prepared a letter for signature by the Regional Administrator, Mr. Neglia, reaching the same conclusion; is that correct?

Mr. ROSE. Yes. That is the normal procedure. He reviews it and Regional Counsel reviews and they don't agree with it, then they—you know, they return it or whatever. They don't execute it.

Senator LEVIN. To your knowledge, had any 8(a) company attempted a stock transaction of this kind before?

Mr. ROSE. Not that I can recollect, no.

Senator LEVIN. And did this transaction present any difficult issues for you?

Mr. ROSE. It did.

Senator LEVIN. And were you satisfied that you had an adequate opportunity to review the record and to make an informed decision in the 1-day review period that you had allotted yourself on those documents? And assume with me.

Mr. ROSE. Yes. Well, you are making the assumption. If I assume that, then I guess maybe we didn't have enough information. But I honestly believe that we had had some information concerning what was going to be in that document even though, you know, the record probably shows that those documents were executed on—I don't know what date, but subsequent to——

Senator LEVIN. Late in December or early January.

Mr. ROSE. Yes. I—um-hum.

Senator LEVIN. Do you remember the meeting which Mr. Rogers has testified to? Were you present——

Mr. ROSE. No. I might not have been there. I might have been on—if he was acting for me, then I was on vacation.

Senator LEVIN. Do you remember the meeting where the question was raised about the Biaggi opinion?

Mr. ROSE. I don't recall the exact meeting, but I do recall conversations concerning that.

Senator LEVIN. Were you present?

Mr. ROSE. Not at the specific meeting. I would not have been at the meeting if Mr. Rogers was acting for me.

Senator LEVIN. To be eligible now for the 8(a) program, a company has to be owned by an economically disadvantaged individual, is that correct?

Mr. ROSE. Yes. Um-hum.

Senator LEVIN. And section 8(a) says that individuals are economically disadvantaged if they are not able to compete due to diminished capital and credit opportunities.

The prospectus for Wedtech's stock offering shows that the company raised $22 million for the company and $6 million for its individual owners. How can a company that can raise $28 million in capital be economically disadvantaged because of diminished capital and credit opportunities?

Mr. ROSE. Mr. Chairman, I think in the statement that I made I indicated that the consideration was, in fact, the total financial needs of a company that was in the process of preparing itself to handle the kind of contract which had been secured for the firm; and, consequently, I am not sure that, and we are still not sure, that the fact that someone has a net worth of a million dollars necessarily excludes them from participation in the program.

We think that when we first started our program way back in the early 1970's, I guess, most of the firms that we dealt with were "mom and pop"-type operations where the financial needs were small. However, as the program evolved, we have started dealing with firms that need a lot more financial support.

I am not sure that we attempt to place a dollar value on the net worth of a company, and there is nothing in the regulations dealing with that. Our concern is whether or not the firm has enough capital or has access to sufficient credit that enables it to perform.

Senator LEVIN. Well, that is what my question relates to. Here is a company that just had a $30 million stock sale.

Well, let me ask you, do you know of any other 8(a) companies that have raised more than $20 million in a stock sale?

Mr. ROSE. Not that—we have none. No, we have none.

Senator LEVIN. Do you know of any 8(a) companies that have raised more than $10 million at a public stock sale?

Mr. ROSE. I don't know of any 8(a) company that has raised money through public offerings, other than Wedtech.

Senator LEVIN. Did you know that Wedtech had access to loans as well as just completed a public stock sale?

Mr. ROSE. Well, I know that they had had—I know that they had had some problems getting funding. I know that, for example, they——

Senator LEVIN. Well, my specific question is did you know that they just had obtained a $20 million revolving line of credit with a number of New York banks?

Mr. ROSE. No. I wasn't really sure—no, I didn't know about that.

Senator LEVIN. You were not aware of that?

Mr. ROSE. Not that, no.

Senator LEVIN. Were you aware that they were also contemplating raising an additional $40 million through a public offering of convertible debentures? Were you aware of that?

Mr. ROSE. No, I was not.

Senator LEVIN. Did you ask them whether they were planning on raising more money through public sale of stock or debentures?

Mr. ROSE. No, I did not. I guess at that time we were so taken up with the first offering that we really were not thinking in terms of, you know, what could happen further on down the road.

Senator LEVIN. Is it fair to say you were somewhat surprised to find out about that first public sale?

Mr. ROSE. It was a surprise to us, yes.

Senator LEVIN. You were not informed by them; you read about it somewhere or heard a rumor about it, or how did you——

Mr. ROSE. Exactly right.

Senator LEVIN. Should you have been informed by the company?

Mr. ROSE. Well, the company should have informed the New York District Office before it ventured on, you know, whatever it was supposed to do. The reason they gave was that they needed—they really didn't know whether or not this would fly. They had to get SEC approval and all the rest of it, and consequently they felt that it was not the right time to present the information. That was their reason.

But, yes, they were——

Senator LEVIN. Were they required to notify you?

Mr. ROSE. They are required to do that, yes.

Senator LEVIN. And they didn't meet——

Mr. ROSE. They did not.

Senator LEVIN [continuing]. Those requirements?

Mr. ROSE. They did not.

Senator LEVIN. Did that trouble you?

Mr. ROSE. It did.

Senator **Levin**. Your January 5th letter[1] concludes that Wedtech remained economically disadvantaged despite its access to capital because its competitors are all Fortune 500 companies and because Wedtech Corporation requires large sums of money to maintain an adequate cash flow while performing the types of contracts it is engaged in.

Mr. **Rose**. Um-hum.

Senator **Levin**. On what basis did you conclude in your January 5th letter that Wedtech's competitors were all Fortune 500 companies?

Mr. **Rose**. Well, the fact is that the company that made the engine, indeed, the Avco Company was the company that was I think used by Wedtech to prepare its initial proposal that was presented for some 90 million or so—I don't recall the amount. Avco was about the smallest company that I knew of that was involved in engine manufac—in the manufacture of engines, and the comparisons—besides the Robert Morris comparisons were also a consideration.

Senator **Levin**. Well, now you have stated again that, as a fact in your January 5th letter that the competitors of Wedtech are all Fortune 500 firms. Is that true?

Mr. **Rose**. Well——

Senator **Levin**. Were their competitors all Fortune 500 firms?

Mr. **Rose**. I'm talking about people who make engines.

Senator **Levin**. Well, let me just go into some of this. My staff took a look at this and they made a phone call to the Army and found out that Wedtech had bid on two competitive Army engine contracts in 1983 and 1984.

Mr. **Rose**. Yes.

Senator **Levin**. The other companies that bid against Wedtech were Clinton Engine Company, Garcia Ordnance Corporation, Duroyd Manufacturing Company, TWA Mold Company, and WF Industries. All of those except for WF Industries are small businesses.

Mr. **Rose**. Yes.

Senator **Levin**. Were you aware of that?

Mr. **Rose**. I was not aware of that. That is subsequent to the time we are talking about.

Senator **Levin**. The first competition that I referred to was 1983. Were you aware of who competed with Wedtech in the 1983 competition?

Mr. **Rose**. No, I'm not sure who competed with them. The data that——

Senator **Levin**. Well, no. I am saying were you aware when you made that statement on January 5th, when you said as a fact, you represented as a fact that its competitors are all Fortune 500 firms. Are you aware of the fact that in 1983, prior to the time you wrote that letter, in fact, it had competed with small businesses for the engine contract?

Mr. **Rose**. No.

Senator **Levin**. Were you aware of that?

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[1] See p. 364.

Mr. ROSE. No, I was not aware of that. I am depending on historic data as contained in publications. I really didn't know who had bid on that engine contract back in 1983.

Senator LEVIN. Well, how then could you make the representation that all of its competitors were Fortune 500 companies?

Mr. ROSE. Well, I don't know. Maybe I made a mistake. But as I said, I was basing my information on data in the published—Dun & Bradstreet and Robert Morris Associates' data. I am not sure that they had the information concerning the 1983 bid. If what you say is true, then I, you know, I have to acknowledge that I erred.

Senator LEVIN. Did you call the Army to find out who their competitors were in 1983?

Mr. ROSE. No, I really did not call the Army.

Senator LEVIN. Why didn't you do that?

Mr. ROSE. Well, it didn't occur to me, Senator Levin.

Senator LEVIN. And did you consider the fact that Wedtech had just purchased a company in Israel and had acquired several new buildings in the South Bronx? Were those facts considered by you when you made the representations that you did?

Mr. ROSE. Well, I was not aware of the fact that Wedtech had purchased several buildings.

Senator LEVIN. All right.

Mr. ROSE. I was not aware of that fact.

Senator LEVIN. One of the statements that you made was that Wedtech required large sums of money to maintain an adequate cash flow. And when I say the statements that you made, I am talking about that January 5th letter that you wrote.

Mr. ROSE. Yes.

Senator LEVIN. The same day that you got all the documents that I referred to, the stock transfers and the escrow agreements.

Mr. ROSE. Um-hum.

Senator LEVIN. That same day you wrote this letter——

Mr. ROSE. Yes.

Senator LEVIN [continuing]. Saying that Wedtech required large sums of money to maintain an adequate cash flow while performing the types of contracts it was engaged in as an explanation as to why they were still economically disadvantaged despite the $22 million raised in the public stock offering.

Now what is the basis for your statement that they required large sums of money to maintain an adequate cash flow? [1]

Mr. ROSE. Again, Senator, from my recollections, and I am not quite sure of the time but I believe I am correct—from my recollection, there was at least one bank—there was at least one bank that constantly advanced money to the firm. Indeed, that bank came to us on many occasions asking us whether or not the firm had received a certain payment. Indeed, that firm at times asked us—asked our permission to allow them to go to the paying office to have the money deposited in the account. So I do know that they were constantly strapped for cash, to use a common phrase.

Senator LEVIN. Was it your belief that the proceeds from the stock sale were going to be used in part to maintain cash flow for the existing line of business?

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[1] See p. 364.

Mr. ROSE. It was my belief, yes.

Senator LEVIN. Despite the fact that on October 13, 1983, Wedtech wrote to your office that "the only cash flow generated by the operations of Wedtech Corporation to finance the production of the contracts is progress payments received from the Federal Government," and despite the fact that attached to that letter, which is addressed to SBA from Wedtech, they showed that the net proceeds of that stock sale, none of them were for the purposes that you say that you thought the public sale was for—to help maintain cash flow?[1]

Mr. ROSE. Well, my assumption was that that was the only reason for it. I don't recall——

Senator LEVIN. Assumption? But they told you in October that——

Mr. ROSE. Well, they didn't—I don't know. I never saw that letter. That letter was probably—it was not addressed to me I don't think.

Senator LEVIN. Well, it is addressed to Mr. Rogers, in your office.

Mr. ROSE. Well, I really don't know. I didn't know that.

Senator LEVIN. A copy went to you.

Mr. ROSE. Well, I don't recall that. But the general impression I think everybody in SBA had was that the reason for floating—you know, for the stock offering was, in fact, to provide working capital.

Senator LEVIN. You mean you had that impression despite the fact that Wedtech specifically told Rogers, with a copy to you, that that wasn't true?

Mr. ROSE. Well, I really didn't know this. I am quite surprised to find this out now.

Senator LEVIN. Did you read the prospectus for the stock sale?

Mr. ROSE. I did read it. I don't remember too much of the detail now, but I did read it.

Senator LEVIN. Did that prospectus show that any of the money would be used for cash flow for existing contracts?

Mr. ROSE. I really don't recall. I mean, it is—that was just an assumption I made. I can't think of what other reason you would have a, you know, a stock offering.

Senator LEVIN. Well, let me just read you the reasons.

Mr. ROSE. Well, I don't know.

Senator LEVIN. Using your imagination, they tell you right here. They say repayment of United States EDA loan, 1.3 million; repayment of Bank Leumi Trust Company of New York, 1.8 million; repayment of loans made to the company by banks, 1.4 million; repayment of principal stockholders' loans, 500,000; repayment of accounts payable and accrued expenses, 5.2; payment of underwriting expenses, payment of cash in advance to vendors, repayment of short-term notes.

Most of it, 9.5 million, reserved for plant expansion and acquisition of machinery and equipment.

Mr. ROSE. Um-hum.

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[1] See p. 293.

Senator LEVIN. And they say right in that letter that the only cash flow generated by the operations of Wedtech to finance the production of the contracts in progress is progress payments received from the Federal Government. They told you in October.

Mr. ROSE. Yes. Well, I am afraid I missed it.

Senator LEVIN. You are afraid you what?

Mr. ROSE. I am afraid I missed that.

Senator LEVIN. Well, I don't know. See, Mr. Rose, what troubles me is the same day that the correspondence shows that these critical documents come in trying to justify what amounted to a phony sale of stock, the same day everybody is falling all over themselves in SBA to approve it. Literally falling all over themselves.

Mr. ROSE. Well, Senator, I——

Senator LEVIN. One of these letters was written before the Counsel's opinion. We have got the January 4th letter from Shorr approving this before his legal counsel on January 5th said it was okay. One day late—he wouldn't even give his legal counsel a day to look at it.

Mr. ROSE. Well, I really don't know the facts. I am sure that Mr. Shorr and Mr. Elbaum were discussing this thing.

Senator LEVIN. Well, but I am talking now about your letter. You have made representations in your letter the same day you got these documents that, number one, all of their competitors are Fortune 500. That is not true. You didn't make a call to the Army. You would have found out that it was not true. You would have found they needed the cash flow from this public sale of stock. They didn't use any of the public sale for cash flow for their contracts, by their own October letter.

You are making representations in this January 5th letter which simply aren't correct. That troubles me deeply. We will take care of asking questions of Mr. Elbaum tomorrow, but I don't understand how you can just say: Well, gee, I didn't know that; and gee, I didn't know this; and I didn't know something else. This was the first 8(a) company that ever went public. You have people who are millionaires walking into the office. That surprised people. Holy cow! What are we doing with people with a million bucks in cash in their own bank account according to their financial statement? They are the ones who are asking you now to keep them in a 8(a) program which is intended to be for economically disadvantaged people. You write a letter the same day the documents are transmitted to you, according to correspondence, saying you approve all this, but you were troubled by it.

Now what are we to think about this kind of thing?

Mr. ROSE. Senator Levin, I am still convinced that the $5 million or whatever it is that the people had, had access to, would not have been adequate to assist them in performing on this contract.

Senator LEVIN. $5 million that they had where?

Mr. ROSE. The cash that supposedly they got from the contract—from the sale of stock.

Senator LEVIN. Well, but their financial statement showed you that Mariotta had a million bucks in cash in the bank in his own account. A million bucks in cash.

Mr. ROSE. Yes. But I am saying that that in itself would not have been sufficient to enable the firm to perform on the contracts.

Senator LEVIN. But was it sufficient enough to give you some pause between the time you got these documents transmitted to you on January the 4th? I mean this is unseemly.

Mr. ROSE. Senator Levin——

Senator LEVIN. I have got to tell you, Mr. Rose, this is absolutely unseemly, to watch the SBA literally falling all over each other——

Mr. ROSE. Senator Levin, I am convinced that we had had information on that prior to January the 4th.

Senator LEVIN. That you had had the details of those documents, the stock purchase agreement and the escrow agreement, prior to January 4th; is that what you are testifying to under oath?

Mr. ROSE. No, I am not testifying under oath that I had had those documents. I said I am testifying under oath that we had information concerning all that data in the package that was presented on the 12th and on the 20th, and I really don't recall the details of those specific presentations. But it is really not true to say that the first inkling we had about what——

Senator LEVIN. I never said that. I was saying that the details of these transactions came to you on January 4th in a letter.

Mr. ROSE. Yes.

Senator LEVIN. And on January 4th it was approved.

Mr. ROSE. Well, I really don't——

Senator LEVIN. That is what the correspondence shows.

Mr. ROSE. I got information from the District based on that—on the presentation that was made, and the only assumption I could make was that the District had thoroughly examined it. I also know that the District had been looking at a lot of the data prior to that.

Senator LEVIN. Do you believe that an individual with a million dollars in the bank is economically disadvantaged?

Mr. ROSE. Senator Levin, I believe that if we truly have an 8(a) program that is intended to develop firms to become competitive in the marketplace we have got to face the fact that they must have access to the capital that is necessary to do it. Now, of course, if we want to limit the 8(a) program to certain types of firms and decide that we don't want to go into certain areas of, you know, of development, then we would have to do this.

I honestly don't know that a person who has got a million dollars in his pocket can be truthfully called economically disadvantaged. On the other hand, I don't know that we want to limit the program to the kinds of businesses that can be financed by people who have $500,000 at their command. I mean, I really don't know what the answer is.

I quite well understand that people would have some concerns about a person with a million dollars being in the 8(a) program, a program for disadvantaged persons. But again I say somebody has to decide what the limits are going to be with respect to the firms that you develop in the 8(a) program.

Senator LEVIN. You did reach a conclusion in your January 5th letter that the principals—that the relative financial strength of the principals does not indicate that they are no longer economically disadvantaged? You did reach that conclusion?

Mr. ROSE. Um-hum.

Senator LEVIN. You said that someone then with a million bucks in the bank was still economically disadvantaged.

Mr. ROSE. Because I was——

Senator LEVIN. For whatever reason, that was your conclusion. Without repeating all the reasonings, that was your conclusion.

Mr. ROSE. All right, yes, in relationship to what we were dealing with.

Senator LEVIN. I understand. There was a form which had been submitted to you by that individual, is that correct?

Mr. ROSE. A form?

Senator LEVIN. Yes. A financial disclosure form. Mr. Mariotta had given you a financial disclosure form? He had to file that form?

Mr. ROSE. Oh. Okay, I don't know what date that was.

Senator LEVIN. Well, December 17, 1983?

Mr. ROSE. Okay.

Senator LEVIN. And that form—the documents are right there in front of you.[1]

Mr. ROSE. Oh. Okay.

Senator LEVIN. That form showed his worth at $1.3 million excluding his 55 percent interest in Wedtech Corporation. Correct? See where it says under——

Mr. ROSE. Says his net worth was $610,000.

Senator LEVIN. That says total liabilities of $600,000.

Mr. ROSE. No, no.

Senator LEVIN. No; his net worth is $610,000.

Mr. ROSE. The net worth is $610,000.

Senator LEVIN. That is right.

Now his assets, in the left-hand column, are $1.3 million. Do you see that?

Mr. ROSE. Yes, I do.

Senator LEVIN. All right. And the reason he could even get down to $600,000 was because of a personal guarantee of a loan to the corporation. Do you see that in the bottom section 2? Way at the bottom of the page, section 2, Bank Leumi Trust Company of New York, a loan to Wedtech Corporation?

Mr. ROSE. Yes. Um-hum.

Senator LEVIN. He had personally guaranteed it. That is how he got from $1.3 million down to $610,000.

Mr. ROSE. Yes, Mr. Chairman. That is right.

Senator LEVIN. Okay. Now included in that form are the following words: "Excludes 55 percent interest in the Wedtech Corporation." Do you see that?

Mr. ROSE. Yes, I do.

Senator LEVIN. So that he did not include 55 percent of the stock that he owned in the Wedtech Corporation in listing his assets of $1.3 million.

My question is this. You state in your January 5th letter—and that is still your January 5, 1984 letter—that it is difficult to estimate the value of that stock.

Mr. ROSE. Yes.

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[1] See p. 306.

Senator LEVIN. Why didn't you just pick up The New York Times and look at the value of the stock in The New York Times?

Mr. ROSE. Yes, well that was not what I really meant. In fact, I went on to say why it was difficult to estimate. Because even if I knew what the stock was worth on that specific day, the fact is that, number one, he could not have sold the stock because of some SEC regulation that they had, at least that was my understanding; and, consequently, he did not have access to the cash that that stock represented. He could not have sold it.

Senator LEVIN. All right. Now let me give you some facts. The New York Times as of that date gave us the value of that stock, $31 million.[1]

Mr. ROSE. Okay.

Senator LEVIN. This economically disadvantaged person that you found here who literally had a million bucks in the bank, a million dollars in the bank; had stock which you didn't consider in terms of his——

Mr. ROSE. Senator Levin——

Senator LEVIN. Let me just finish the question.

Mr. ROSE. Um-hum.

Senator LEVIN. Had stock which you didn't consider for the reason you gave, the SEC regulation. Had stock worth $31 million, according to The New York Times of that morning. And the reason that you didn't consider his $31 million in stock in considering whether or not he was economically disadvantaged were those SEC regulations.

Now my question is where did you reach the conclusion that the SEC prohibited him from selling any stock? How did you reach that conclusion?

Mr. ROSE. That was what I was told.

Senator LEVIN. By?

Mr. ROSE. I was told by the company and by their attorneys that he could not sell the stock for two years or something like that. I don't recall all the details.

Senator LEVIN. Or something like that?

Mr. ROSE. Yes.

Senator LEVIN. That is not, first of all, what the SEC regs are; and, secondly, that is not what you were told by the company.

Mr. ROSE. That is not what I was told by the company?

Senator LEVIN. No. No.

The SEC regs permit insiders to sell 1 percent of the company's stock every 3 months.[2]

Mr. ROSE. Well, that is not what I——

Senator LEVIN. That is a million bucks every 3 months that he can sell of that $30 million that he owns.

Mr. ROSE. Well, I did not know this. But again, again bearing in mind the cash requirements of the firm, I don't believe that would have done it.

The second thing, Senator, is——

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[1] See p. 328.

[2] See p. 264.

Senator LEVIN. But, Mr. Rose, you have testified here this morning the SEC regulations prohibit him from selling his stock and that is the reason why you didn't want to consider 31——

Mr. ROSE. That was my understanding.

Senator LEVIN. That was your understanding. Okay. And what I am telling you is that your understanding was incorrect. Did you check with the SEC?

Mr. ROSE. No, I did not call the SEC.

Senator LEVIN. You just took the word of the company in this regard, is that right?

Mr. ROSE. Yes, I probably did. I don't really recall now.

Senator LEVIN. And you didn't even accurately read their letter. By the way, their letter is inaccurate, too. On this point their letter is inaccurate. December 22, 1983, they represent that, in reference to Mariotta and his present financial status, Mr. Mariotta is restricted from selling more than 1 percent of his current holdings every 90 days.[1] That is what they told the SBA. That he could sell 1 percent of his holdings every 90 days.

So when you wrote in your letter that he can't sell his stock for 2 years you were not even accurately reflecting what they told you. You shouldn't have relied on that to begin with; you should have checked for yourself. But nonetheless, if you had even relied on what they told you, they told you that he could sell 1 percent of his stock every 90 days.

The facts are, Mr. Rose, that the SEC regulation which you thought you were relying on permits him to sell 1 percent of the company's stock every 90 days. That is a million bucks.

Mr. ROSE. Well, I didn't have access to that information.

Senator LEVIN. All you had to do—you could have called the SEC, couldn't you?

Mr. ROSE. And again, I made a recommendation to my office, this thing was examined in Washington, the final decision was made in Washington.

Senator LEVIN. Yes, but they are relying on you.

Mr. ROSE. As I said before——

Senator LEVIN. They are relying on you. They say: Heck! The District and Regional Offices make these recommendations. And then you write them, you represent that SEC regulations provide that none of the officers of the corporation can trade their stock on the market at this time. That is simply not true.

Mr. ROSE. That was the impression I had, Mr. Chairman.

Senator LEVIN. Were you aware of the fact that Mariotta, in fact, sold more than a million dollars of his stock in the 2-year period during which you said he couldn't sell?

Mr. ROSE. No, I was not aware of that.

Senator LEVIN. Mr. Rose, your January 5th letter concludes by recommending that Wedtech be granted a 3-year extension in the 8(a) program. Now, even if they arguably met the 8(a) eligibility criteria, that still would not require that the company be granted that extension, would it? Those are two separate issues, is that correct?

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[1] See p. 317.

Mr. ROSE. I missed something.

Senator LEVIN. Well, their eligibility term ran out in October, I believe.

Mr. ROSE. That was the fixed program participation term.

Senator LEVIN. The fixed program term. That had to be extended?

Mr. ROSE. It would have, yes.

Senator LEVIN. And that's a separate question from whether or not they are minority-owned and disadvantaged?

Mr. ROSE. Yes. That is a separate question.

Senator LEVIN. Those are two separate questions.

Now the letter provided the basis, albeit on erroneous facts, for why you considered them to be economically disadvantaged, despite the fact that they hadn't paid for the—Mariotta hadn't paid for the stock which kept him at 51 percent, despite the fact that you are wrong about the Fortune 500 companies, despite the fact that you could have ascertained the $30 million in Wedtech stock's value in terms of his disclosure, despite all of the misstatements in your letter of January 5th—all of those statements went to the question as to whether or not the owners and the firm continued to be economically disadvantaged. You did not address the issue of whether or not that fixed program term should be extended.

So my question to you is why did you recommend that they be given an extension on their 3-year program term? It is a different issue now from their eligibility in terms of economic disadvantage.

Mr. ROSE. You say that my letter did not address that?

Senator LEVIN. Yes. Your letter did not address the FPPT extension. You recommend it but you don't explain why. Can you give us now the reason why you recommended the extension of their fixed program term?

Mr. ROSE. Well, I don't know if I address that in my overview. Well, I don't know if I addressed it in the letter, but the reason—the fact is that the firm, the firm had previously, had requested an FPPT extension back in—I don't recall when—early 1983, and the agency, the District recommended and the Region concurred with the recommendation that the firm be given 4 years, a 4-year extension.

This recommendation was forwarded to Washington and was, in Washington, being acted upon at the time that this other matter came up.

Senator LEVIN. Are you familiar with the standard operating procedure forms before these fixed terms can be extended that have to be filled out? In general, are you familiar with the form?

Mr. ROSE. I have a general idea of the forms, yes.

Senator LEVIN. Must the company fill out a form before its program term can be extended?

Mr. ROSE. That was not a requirement in 1983. I think this is a requirement that is contained in the new standard operating procedure. But in 1983, we had a form that we filled out when the firm received its initial fixed program participation term. There was not a form to be completed when the firm was—when the firm requested an extension.

Senator LEVIN. Well, there was an evaluation sheet that was filled out in November of 1982 by this company when it was requesting an extension of its fixed term.

Mr. ROSE. Well, that would have been somewhere in the file. That would be in the file.

Senator LEVIN. Yes.

Mr. ROSE. If that was—if that had to be completed.

Senator LEVIN. So there was a requirement that they fill out a form?

Mr. ROSE. Yes. But all that document—that documentation was forwarded to Washington.

Senator LEVIN. Did you review that documentation?

Mr. ROSE. I don't recall. I don't recall.

Senator LEVIN. Wouldn't that have been your job, to review that documentation?

Mr. ROSE. It might have been if I was in the office. I might not have been in the office. But I really don't recall. That was on the initial recommendation, and I really can't recall examining that initial request for FPPT that was sent to Washington.

Senator LEVIN. Was it generally understood and well-known in the office that this firm had good political connections?

Mr. ROSE. I am not—I am not so sure about that. I know that everybody was proud of the firm. Everybody felt——

Senator LEVIN. There was never any discussion about the political connections of this firm?

Mr. ROSE. No, that I can—I can't—no.

Senator LEVIN. Pardon?

Mr. ROSE. Not really. No. No. No. No.

Senator LEVIN. Never discussed?

Mr. ROSE. Not in 1983.

Senator LEVIN. No, at any time—1983, 1984, 1982, 1985?

Mr. ROSE. The whole question concerning influence and the rest of it came out after the news media information. I had no——

Senator LEVIN. So you never heard any discussion about this firm being well-connected politically?

Mr. ROSE. No. No.

Senator LEVIN. You never heard of that in 1982 or 1983?

Mr. ROSE. No, no, no. In 1982 or 1981, during the time we were talking about the—trying to get the engine contract, I recall a letter that was prepared by Bob Quigley, who was then my deputy—and I don't remember what year it was because I don't even remember when he went—left here—which talked about White House interest in the acquisition of the contract. But that is about all I know.

I mean, with respect to political influence, no, I don't recall ever getting any inquiries, correspondence or anything about——

Senator LEVIN. That is not my question.

Mr. ROSE. No, I was not aware——

Senator LEVIN. My question is did you ever hear that they were politically well-connected?

Mr. ROSE. No, I never heard it, really.

Senator LEVIN. Now this is what Mr. Tishelman, the former New York Director, told us. Do you know him?

Mr. ROSE. Yes, I know him.

Senator LEVIN. He told us they were obviously politically well-connected. Mr. Elbaum told our staff they were able to make phone calls directly to the District Director and Regional Administrator, while others would have to go to program people first; they did have access. It would be accurate to say they had quite a bit of access to the top people. Anyone who felt that they were not well-connected would be fooling themselves. They were known to be politically well-connected.

But you are saying that is not true, as far as you know?

Mr. ROSE. I don't know that the fact that somebody could call my office or call the Regional Administrator is an indication of political influence, I mean, or that they are politically well connected. Anybody can call the office of the Regional Administrator or the District Director without having any political connection.

Senator LEVIN. I am asking you this question. You are saying that to the best of your knowledge they were not known to be politically well-connected?

Mr. ROSE. Senator Levin, the only thing that I know is that they had as their firm, their law firm Biaggi & Ehrlich. Now the fact that Biaggi & Ehrlich was partly owned by Congressman Biaggi might be an indication of something, but I really don't know that there is any——

Senator LEVIN. Well, let me press the question. In your opinion, were they politically well-connected, Mr. Rose?

Mr. ROSE. I really don't know. I can't make a judgment on it.

Senator LEVIN. You don't have an opinion on that?

Mr. ROSE. I can't make a judgment on that.

Senator LEVIN. You know a guy named——

Mr. ROSE. You see, the reason I am saying this, Mr. Chairman, is that a whole lot of people believe that there is a lot of political influence being played in SBA, and I know that at my level and in the District in spite of what people think we are not, at least I am not influenced by the fact that Senator Levin calls me and asks about a specific contract. I don't believe that Senator Levin is thinking of influencing my decision either.

At least that is—maybe I am naive but that is my opinion.

Senator LEVIN. Well, I think you are very naive, but my question isn't about your naivete. My question is do you believe that they had strong political connections, putting aside whether those connections could produce results? That is a different issue. Do you believe that they were strongly connected politically?

Mr. ROSE. Based on what I see in the newspaper, yes.

Senator LEVIN. But at that time that thought never crossed your mind?

Mr. ROSE. No, it did not.

Senator LEVIN. All right. Now the head of the Minority Small Business Office in the District Office, Hank Diaz, has told the Subcommittee staff that the pontoon contract was unusual and that Wedtech's selection was not discussed at the district level. This conclusion is supported by our review of SBA documents which revealed no documents from the New York District Office discussing the selection of Wedtech as the SBA's candidate for the pontoon candidate.

Mr. Diaz told the Subcommittee staff that he heard through the grapevine that Wedtech was going to get a big contract from the Navy. When he went to Gus Romaine, of your staff, to ask whether the offering had been received, Mr. Diaz stated, "He told me hush up because it was coming from the top, and after that I kept quiet."

Were you aware of the fact that the pontoon contract was being discussed, not in the District Office, but in the National Office of the SBA?

Mr. ROSE. Well, in my testimony I indicated that I really didn't know too much about the pontoon contract. I believed that it was, and I was corrected by Mr. Rogers—I thought that it was part of the Pilot Program, which Pilot Program had DOD has the targeted agency and which Pilot Program was handled in Washington. I just believed that it was an outgrowth of that pilot program which was, in fact, designed to identify unusual kinds of requirements for firms in the 8(a) program.

Senator LEVIN. Do you know Gus Romaine of your staff?

Mr. ROSE. I know Gus Romaine, yes.

Senator LEVIN. Are you familiar with his conversation with Diaz?

Mr. ROSE. No, I am not familiar with it.

Senator LEVIN. Would it surprise you if he told Mr. Diaz to hush up because this decision was coming from the top? Would that surprise you?

Mr. ROSE. Well, I am kind of surprised. Because the procedure would require the District Office to prepare a procurement package and forward it to the Regional Office for negotiation.

Senator LEVIN. Do you know Richard Zilg?

Mr. ROSE. Yes.

Senator LEVIN. He is a contracts officer in——

Mr. ROSE. He was a Contract Negotiator.

Senator LEVIN. In the Region?

Mr. ROSE. He might have been at that time a Contract Negotiator, I can't recall.

Senator LEVIN. He stated at one time that you would have to be thick not to see that Wedtech was a favored child and that many people had a special interest in the company. Nobody was unaware of their special status, he says.

And you are saying you were unaware?

Mr. ROSE. No. No. No. I am not saying I am unaware. I thought Wedtech was a special firm because I had worked with Wedtech for years.

Senator LEVIN. What made it so special?

Mr. ROSE. Well, because they had attained—you know, had accomplished more than most of the firms in our program.

Senator LEVIN. It was special because of their success?

Mr. ROSE. Yes.

Senator LEVIN. Nothing to do with political contacts?

Mr. ROSE. Well, you know, the thing that bothers me about this is that we spent so much time and effort trying to find requirements for this firm, and for all of the other firms. Indeed, the biggest problem with the 8(a) program is the fact that everybody resists every attempt that we make to find requirements, big or small, for our firms.

Senator LEVIN. But you weren't aware of the fact that the White House was interested in this firm?

Mr. ROSE. I was not aware until I saw that thing in the letter that was written by Bob Quigley which said there was White House interest. That is all I know about it.

Senator LEVIN. Were people afraid, as Zilg told our investigators, that the company would be found ineligible? Was there some fear that this company might be found ineligible?

Mr. ROSE. Well, I guess there was concern. I don't know about fear. I guess there was concern that the firm would be found ineligible.

Senator LEVIN. And why was that?

Mr. ROSE. Well, because everybody would be concerned about it. The fact is that we had just had a long, drawn-out battle with the Army to try to get this engine contract. They had not passed first article.

Senator LEVIN. Had not what?

Mr. ROSE. Had not passed first article. In other words, they had to make a certain number of engines. I think—I don't know—50, 60, I don't remember what the number was, which had to be tested before the Army would authorize full production of the engine, and they had not completed the first article period—testing period. And of course, we had—we were concerned, everybody was concerned about that.

Senator LEVIN. Were you here all day today?

Mr. ROSE. Yes, I was.

Senator LEVIN. You heard Mr. Templeman testify——

Mr. ROSE. Yes.

Senator LEVIN [continuing]. About a White House meeting?

Did that testimony surprise you or bother you or disturb you at all?

Mr. ROSE. Well, it bothered me to a certain extent. But you know, the request for that engine contract started at the District from what I can recall, and as I say, we are constantly struggling to find requirements for our firms. One of the reasons——

Senator LEVIN. No. I am talking about the testimony that he never would have recommended this but for White House pressure. Does that bother you?

Mr. ROSE. Probably. Probably.

Senator LEVIN. You don't seem too concerned about it.

Mr. ROSE. Well, very simply because we have to struggle so hard to find requirements for our companies. That is the problem that we have with the program. That is one of the reasons why the program is so difficult, and that is another reason why you have one or two firms with the bulk of the requirements. Because we are not getting the support of the agencies for this program.

Senator LEVIN. Mr. Rose, I have indicated a number of factual inaccuracies in that letter you wrote on January 5th. If you had to write that letter all over again, would you write it differently?

Mr. ROSE. Well, I would probably write it differently and I would check the information that I had.

Senator LEVIN. Would you check with the SEC?

Mr. ROSE. I beg you pardon? Yes, I would have checked with the SEC.

Senator LEVIN. And would you have checked with the terms of the access to other capital, for instance, asked them whether or not they were planning on another public offering? Would you ask that question?

Mr. ROSE. I would probably have asked it. Yes, I would have asked it.

Senator LEVIN. Thanks, Mr. Rose.

We will stand adjourned till tomorrow. We will continue with SBA witnesses at that time.

[Whereupon, at 2:05 p.m., the Subcommittee was recessed, to reconvene on Thursday, September 10, 1987.]

OVERSIGHT OF FEDERAL PROCUREMENT DECISIONS ON WEDTECH

THURSDAY, SEPTEMBER 10, 1987

U.S. SENATE,
SUBCOMMITTEE ON OVERSIGHT
OF GOVERNMENT MANAGEMENT,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:30 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Carl Levin, Chairman of the Subcommittee, presiding.

Present: Senators Levin, Cohen, and Heinz.

Also present: Senator Weicker.

Staff present: Linda J. Gustitus, Staff Director and Chief Counsel; Peter K. Levine, Counsel; Jack Mitchell, Investigator; Mary Berry Gerwin, Minority Staff Director and Chief Counsel for the Minority; Melissa W. Norton, Minority Counsel; and Frankie de Vergie, Chief Clerk.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Good morning everybody. This is day two in our hearings on SBA's role in the Wedtech scandal. Yesterday, we heard from Wedtech's current lawyer, Martin Pollner, about the extent of payments made from Wedtech accounts to various consultants for the purpose of exercising political influence in securing Government contracts in the 8(a) program.

The amount of money spent by an alleged small business for the purchase of political influence is nothing less than incredible. Mr. Pollner testified that Wedtech paid out millions of dollars to insiders and consultants in a "Ponzi scheme" that left the company financially stripped and incapable of performing its contracts.

The politically well-connected consultants landed on Wedtech like flies on honey, and helped suck it dry. They personally cashed in on the President's stated hopes of jobs for the Bronx.

We also heard from Don Templeman, former Deputy Administrator and Acting Administrator of SBA, about the role of the White House in the award of a $31 million Army engine contract to Wedtech in 1982.

Mr. Templeman testified that he authorized the award of $5 million in SBA assistance to Wedtech for the performance of this contract, despite his own misgivings, because of the unusual White House interest in the contract.

Mr. Templeman testified that he did not know of similar White House involvement in any other 8(a) contract, and in his view, the Army engine contract would never have been awarded in the absence of pressure from the White House.

Finally, we heard from two SBA officials in the New York regional office about key decisions of that office on Wedtech's eligibility. Those decisions twisted and distorted SBA rules and regulations, as well as the underlying purpose of the statute.

Aubrey Rogers and Edric Rose acknowledged that they had concerns about Wedtech and Wedtech's officers' continued eligibility after a public stock offering in August 1983, but that they nevertheless recommended that Wedtech be allowed to remain in the 8(a) program on the basis of representations made by Wedtech and its attorneys, and despite the fact that Wedtech's fixed program participation term had expired.

Mr. Rogers and Mr. Rose testified that they accepted a number of Wedtech statements, despite the fact that contrary information was readily available from sources such as Wedtech's own prospectus, earlier Wedtech letters to SBA, and the stock listings in the "New York Times." They acknowledged that other Wedtech representations might have proven incorrect by simple inquiries to the Army and to the SEC.

Today, we will probe further the questionable actions and inactions of SBA relative to Wedtech's eligibility in late 1983 and early 1984, the period leading up to the award to Wedtech of the largest single contract ever given out to any company under the 8(a) program, a $130 million Navy pontoon contract.

Among other issues, we will examine SBA's approval of the so-called sale of Wedtech stock that was concocted by the company for the express purpose of regaining 8(a) eligibility. After we hear from a panel of SBA lawyers, we will also have the opportunity to hear today from Jim Sanders, the SBA Administrator at the time that key decisions were made to permit Wedtech to remain in the program, and to receive the Army engine contract and the Navy pontoon contract.

We are delighted to have with us Senator Lowell Weicker, who is the Ranking Minority Member of the Small Business Committee. We have invited the Small Business Committee to join with us in these hearings because of the critical role that that Committee will be playing in any revision of the SBA law, particularly the 8(a) provisions of that law, and perhaps Senator Weicker has an opening statement at this time.

OPENING STATEMENT OF SENATOR WEICKER

Senator WEICKER. Thank you very much, Mr. Chairman.

First of all, I would like to have my opening statement included in the record in its entirety.

Senator LEVIN. It will be.

Senator WEICKER. Secondly, I would like to compliment the Chairman, and the members of his Subcommittee staff, for conducting a thoroughly professional and precise investigation on this matter. I think the Nation is indeed in debt to him.

Everything that I have had occasion both to read and to hear brings credit upon him and the U.S. Senate.

Lastly, my concern is that the manipulations of a few individuals, both within and outside the Government, not eliminate a program that is of absolute necessity to the minority communities in this Nation.

If there is any way that an individual can enjoy full participation in our economic main stream, it is by success in business. Unfortunately that road has been closed to blacks and Hispanics throughout the course of our history.

It is tough enough being a small businessman in the United States. It is even tougher to be a black or Hispanic small businessman in the United States. Now the actions of a few grasping individuals threaten an entire program.

Mr. Chairman, I am not so sure that there is anything that can be done, legislatively. Many of the issues that came up through the course of your investigation were addressed, legislatively, not so long ago. The fault lies in the administration of the program, and in those who will always seek to somehow circumvent the laws of this Nation.

So, I want to thank you for permitting me to be a part of these hearings. I will certainly do everything I can, legislatively, to address the wrongdoing that you have unearthed. The one thing I am not willing to do is to eliminate an entire program, which I consider to be essential, in terms of opportunity, economic opportunity, to minorities in this country.

I look forward to the testimony that follows. Again, I thank you both for your investigation and for your courtesy in allowing me to participate in these hearings.

[Senator Weicker's prepared statement follows:]

PREPARED STATEMENT OF SENATOR LOWELL WEICKER, JR.

Let me begin by congratulating my friend and colleague Senator Carl Levin as well as members of his subcommittee for conducting a very thorough investigation on the Wedtech Corporation and holding this series of hearings. For the past seven months Senator Levin and his staff have done a very professional job of probing and tracking events surrounding the awarding of two major defense contracts to Wedtech and the role political influence might have played in making these awards. This has been a mammoth task but also timely as the Congress considers legislative reforms in SBA's section 8(a) program.

Many questions remain unanswered which will be explored today as to what really happened to a small minority firm located in New York's South Bronx, formerly known as "Welbilt" before it became Wedtech. Not the least of these is the SBA's role in approving the Army engine contract and further permitting the firm to stay in the program after it made a public offering of stock, the first of such to take place in the history of the 8(a) program. We must learn from this unfortunate tale of apparent incompetence and corruption and determine what legislative safeguards can be invoked to prevent any future "Wedtechs".

These hearings are of particular interest to me because as chairman of the Senate Small Business Committee from 1980-1986, before that time and since, as ranking member, I have been an advocate of this minority business development program because in my mind there has been the undisputed need for existence. However, I am fully aware of the plethora of problems that has historically plagued the 8(a) program. In exercising oversight and legislative jurisdiction over the SBA over the years, I have been involved in drafting a series of legislative changes in response to documented abuses uncovered by congressional investigations. In 1978, Public Law 95-507 was enacted to expand the business development emphasis of the program and to put a stop to "front companies". In 1980, Public Law 96-481 was promulgated and it required SBA to set fixed graduation dates for firms to leave the program to prevent the same firms from getting the lion's share of awards with few new companies entering the program. Thus, the FPPT or fixed program participation term was put into law.

Most recently, in exercising oversight authority, the Small Business Committee completed the first comprehensive survey of section 8(a) graduates. The survey was conducted in order to determine first-hand from those whom the program serves its effectiveness as a business development tool—its strengths and weaknesses. The survey results clearly revealed that SBA's administration of the program left much to be desired. There was no consistency in administration of the program from region to region. Key decisions appeared to be arbitrary in nature and often very political according to respondents. Another major concern raised was the firms' dependence on 8(a) contract support as they left the program. This is another example of poor program administration, in my judgement.

These results are very troubling to me because many of the concerns expressed by the 8(a) graduates reflect the same weaknesses and problems that plagued the program in the past which should have been corrected by legislation already enacted. That leaves me no alternative but to believe the program's problems are mainly the result of poor administration and management, not lack of supportive legislation. Something must be done about this.

On the other hand, I must say that I am also aware of the personnel cuts this agency has sustained over the years—staff has been reduced by more than 35 percent since 1979 with an increase of nearly 40 percent in its portfolio of 8(a) firms in that period of time. This level of staffing cuts would have a negative impact on even the most smoothly run operation.

Thus, we have reached a critical juncture in the future of the 8(a) program. Either we restructure this program in such a manner so as to achieve the purpose of minority business development or we shut it down. Just a few weeks ago a similar "Wedtech" type situation in the State of Minnesota was revealed in the news media. Six persons were arrested on charges that they fradulently obtained minority construction contracts worth more than $3 million. Granted, the dollar amounts may be smaller than in the Wedtech case, but the impact of wrongdoing is just as great.

Another example is the SBA El Paso office which is under Federal investigation for allegedly taking bribes and wielding political influence in awarding 8(a) contracts. It has become common knowledge that the SBA District Director in El Paso was the White House liaison who played a major role in obtaining the Army engine contract for Wedtech.

That is the reason these hearings are of such importance. While we all perhaps feel that Wedtech should never have happened—and wonder up to this very moment how it could have—we must now move ahead and do what has to be done. I think I can speak for all of the Small Business Committee members, including Senator Bumpers, our chairman, when I say we are ready to use the results of this investigation and begin to promulgate legislation that will set the 8(a) program in a new direction, one that won't be as prone to abuse or political maneuvering.

These hearings will go a long way in aiding the Small Business Committee as well as Congress to do just that. And again, I extend thanks and congratulations to Senator Levin, his subcommittee members and staff whose hard work has brought us to today's hearing.

Senator LEVIN. Before we call on our witnesses, Senator Weicker, let me comment first of all by thanking you for your very gracious statement about the work of this Subcommittee. We have been working very closely with you, and your Subcommittee staff, to make sure that these hearings, indeed, are targeted on the abuse of the program and not on the program itself.

Your leadership and your sensitivity in this area, are more than ever needed for the very reason that you point out, which is that we have got to aim very carefully here at the abuse, and make sure that we do not hit a good program in the process. We will try to reflect the kind of sensitivity which you display in that area in all of our reports and our deliberations, because I fully agree with what you have said about the importance of this program and how we should not mix up the mistakes which were made and have been made in a number of these contracts with the important purpose of this program. Thank you very much for participating and for your staff's work with us on this hearing.

Before we continue I would like to place in the record the opening statement of Senator Heinz who was unable to participate in today's hearing.

[The statement referred to follows:]

OPENING STATEMENT OF SENATOR HEINZ

Mr. Chairman, thank you for this opportunity to review alleged abuses of the Small Business Administration's 8(a) set-aside program.

Established in 1967, the 8(a) set-aside program was intended to help minority-run businesses gain a competitive footing in American business. Indeed, many businesses that otherwise would have had to face adverse social and economic odds have benefited from the financial and advisory services provided by the Small Business Administration.

But some have abused the good intentions of the 8(a) program—holding the integrity of the Small Business Administration up to public scrutiny and criticism. Keepng in mind the original intent of the 8(a) set-aside, this subcommittee will examine how the current law and regulation of the program might have allowed certain abuses to go by unchecked. Working with the Small Business Committee, we will focus on how this SBA program might be restructured to avoid such abuses in the future.

The Wedtech Corporation was one of these companies that initially profited from the SBA's guidance. However, rather than using the program as a stepping-stone to success, the company soon found itself too dependent on 8(a) contracts, and apparently resorted to almost any means to be awarded more.

With jurisdiction over the Ethics in Government Act, the subcommittee will also examine how current and former Government officials may have abused their connections. For instance, witnesses testified yesterday that influence peddling strongly motivated the Small Business Administration's decision to award Wedtech with five million dollars in set-aside assistance for any Army engine contract. Some have testified further that White House interest in Wedtech led to the actual awarding of that contract in 1982.

Today's hearing will help us learn how we can reinstate the integrity of the 8(a) program while improving Federal assistance to disadvantaged businesses.

Thank you, Mr. Chairman.

Senator LEVIN. Our first witnesses today are Robert Webber, Jack Matthews, and David Elbaum. I am wondering if the three of you will come forward. We will talk to you as a panel, and while you are standing, I would ask that you raise your right hands, and swear that the testimony you are about to give today is the truth, the whole truth, and nothing but the truth, so help you God.

Mr. WEBBER. I do.

Mr. MATTHEWS. I do.

Mr. ELBAUM. I do.

Senator LEVIN. Thank you, gentlemen.

Mr. Robert Webber is in the Washington Office of the Small Business Administration, the Office of General Counsel.

Mr. Webber is on my left. Mr. Matthews is in the middle, and he is from the Regional Office of the Small Business Administration in New York.

David Elbaum is from the District Office and is District Counsel at the Small Business Administration that is, I guess now, in Newark, New Jersey.

Mr. ELBAUM. Yes, sir.

Senator LEVIN. At the time of these events you were in New York?

Mr. ELBAUM. I was a District Counsel in New York. Yes, sir.

Senator LEVIN. All right. Gentlemen, I think what we will do is ask you to give your statements as briefly as you can. They will be made a part of the record, and we will call first on Mr. Webber.

TESTIMONY OF ROBERT WEBBER, OFFICE OF GENERAL COUNSEL, U.S. SMALL BUSINESS ADMINISTRATION, WASHINGTON, DC; JACK MATTHEWS, OFFICE OF REGIONAL COUNSEL, U.S. SMALL BUSINESS ADMINISTRATION, NEW YORK, NY; and DAVID ELBAUM, OFFICE OF DISTRICT COUNSEL, U.S. SMALL BUSINESS ADMINISTRATION, NEWARK, NJ

Mr. WEBBER. Mr. Chairman, I would be quite pleased if we could just introduce my statement into the record,[1] and I will answer any questions that you have, sir.

Senator LEVIN. Thank you.

Mr. Matthews.

Mr. MATTHEWS. I would be pleased to do the same thing, if it pleases the Chair, sir.

Senator LEVIN. All right. Unless there is objection we will do that also with your statement.[2]

Senator LEVIN. Mr. Elbaum.

Mr. ELBAUM. Mr. Chairman, just one point, and it is not really part of a statement. Page 9 of my formal statement [3] has a typographical error in the last paragraph, beginning with on March—it says "26th." That should be March 28th. And at this time I would join Mr. Webber and Mr. Matthews.

Senator LEVIN. Thank you, gentlemen. Your statement will be corrected in the way you indicate and be made a part of the record.

First, Mr. Webber, my questions will be addressed to you and we will follow just a rough 10-minute rule here as Senators come in, so we can all have a chance.

Mr. Webber, the former Administrator of the SBA, Mr. Sanders, who will be testifying here today, has told the Subcommittee staff that when Wedtech's public stock offering came to his attention he was concerned about the precedent that would be set for other companies.

He stated that he viewed this as a matter of great importance and involved you, as the General Counsel of the SBA, in discussions about the issue.

Mr. Sanders' chief of staff, Mr. Luhlier, has told the Subcommittee staff that he personally consulted with you on the question of whether an 8(a) company should be permitted to go public and stay in the program.

He also stated that he sent the Wedtech submission in a binder about the size of the Manhattan phone book to your office for review.

Mr. Luhlier viewed this as a matter of great importance, both because Wedtech was the first 8(a) company to go public, and because he was concerned about the public perception involved in the treatment of such a huge company. In Mr. Luhlier's words, "This is big bucks."

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[1] See p. 216.

[2] See p. 227.

[3] See p. 232.

The Subcommittee staff has learned that there was as many as half a dozen meetings on Wedtech's eligibility in the fall of 1983 involving the Administrator, his chief of staff, the regional Administrator, and yourself.

Can you tell the Subcommittee who attended those meetings, and what was discussed?

Mr. WEBBER. I have no recollection of the meetings, Mr. Chairman. I would not question the fact that there were meetings held at that time, but my recollection is very dim. In fact when the investigation was commenced on—by, I think our Inspector General, or at the time the Inspector General was involved in accumulating documents, our office was requested for documentation, and I think our office responded that we did not have any information or documents in the office.

At a later time, a second request was circulated by the office, and I spoke to my General Counsel, our Associate General Counsel for General Law, and we made a second search, and found a copy of the opinion that we furnished to the Committee in our chron files.

There was not, in our files, anything relating to the documents that would normally have been preserved in our files. The things that had been furnished from Mr. Luhlier were not in our office.

However, when we found the one copy of the opinion, that was circulated to the Inspector General. I read the opinion at that time, and I did not see anything that would particularly shock me in the opinion itself, and apparently, in signing that opinion, I must have signed it in a fairly routine fashion.[1]

I think, in hindsight, when I look at that opinion—and I have learned since that the term of 10 years for the payout on that stock was a very critical element, that should have alerted us to looking further into this transaction. That was not done. I regret that very much, because as you have stated, or, as you have quoted Mr. Sanders, the idea of having a 10-year payout, when a company only had 2 or 3 years left in the program was, on its face, a precedent that could have been very dangerous to the agency.

And I think I have stated to my staff this, and I regret that very much, but on the face of the opinion that I signed, that 10 years was not cited, and I did not know that until I asked Steve Marquetta, an investigator for the agency, what the precise number of years was for that payout.

Senator LEVIN. Are you talking about the payment for the stock——

Mr. WEBBER. Yes.

Senator LEVIN [continuing]. Was "sold"——

Mr. WEBBER. Right.

Senator LEVIN [continuing]. To Mariotta, but in fact he never paid any money for it, and in fact was never physically turned over to him, which he could not sell, which was put in escrow, and which, if not ever purchased during that payout period, would simply revert to the owners of the stock. That is what you are referring to now?

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[1] See p. 371.

Mr. **Webber**. There were two separate transactions. One of the transactions, as I understand it now, was that a minor portion of the stock was sold over a 2-year period. A major portion of the stock was sold over a 10-year period.

Senator **Levin**. But my question to you—and I will get to that in a moment—related to whether or not the company should be permitted to go public and stay in the program. It is a slightly different question. The question that you are addressing yourself to is the effect on the minority ownership, and whether or not there was a valid transfer to Mariotta in order to preserve his 51-percent ownership.

But let's go back a minute to the fall of 1983. I asked you about a number of meetings which we know took place, others have testified took place, at which you were present, at which it was discussed, in some detail, as to whether or not a 8(a) company should be allowed to go public at all, or whether or not that would automatically eliminate the argument that they are economically disadvantaged.

And you are saying on those meetings, you have no recollection of those meetings?

Mr. **Webber**. I do not have any direct recollection. My advice at those meetings would have been that the statute does provide for a public offering. In the case of a transfer of stock, even though it is not fully paid for at the time of transfer, there can be a legal transfer.

And I do not think there is anything wrong in the opinion, as it is written. There was a legal transfer of stock and ownership was vested in the disadvantaged owner. The majority of stock and the control of the company, was in the disadvantaged owner.

I am only saying that the tipoff should have been the 10-year interval, which bothers me. I am sure we probably had meetings. I have attended hundreds and hundreds of meetings, and my recollection of meetings 4 years ago is very dim.

Senator **Levin**. But even though it was the first meeting relative to a public sale by an 8(a) company, it does not stick out—those meetings—relative to that issue?

Mr. **Webber**. No.

Senator **Levin**. OK. Now the payments for the stock.

After that public sale took place, Mr. Mariotta no longer owned 51-percent of the stock, and so the company had to, as I put it, concoct—because it clearly was a concoction—some kind of a transfer to him.

Other shareholders put some stock in escrow which he did not pay for, is that correct?

Mr. **Webber**. Yes.

Senator **Levin**. And if he did not pay for, after a 2-year period, when he was supposed to start paying for it, it would simply revert to the former owners, is that correct?

Mr. **Webber**. Yes. That is the larger portion of that stock——

Senator **Levin**. That is correct. That is what we are talking about. That is the one that gave him the majority ownership. And it would simply revert to him if he did not pay for it, is that correct?

Mr. **Webber**. Yes.

Senator Levin. And the price that he would pay if he decided to pay for it would be the price if and when he decided to buy it, is that correct?

Mr. Webber. Yes.

Senator Levin. So there was no price set in this agreement, and if in fact after 2 years he did not make his first payment, the stock would simply revert without penalty, is that correct?

Mr. Webber. Yes. That is correct.

Senator Levin. All right.

Mr. Webber. Now we are talking about information that I do not recall having at that time.

Senator Levin. Oh, so you did not read the documents, the transfer documents?

Mr. Webber. No, sir. As I have mentioned in my statement, I relied on my staff, and the opinions of other attorneys, as to the validity of the transfer.

Senator Levin. All right. Were you aware that there would be no payment required for 2 years?

Mr. Webber. No, sir, not at the time.

Senator Levin. Were you aware that payments to be made, if and when they were made, after 2 years, would be made at a price to be determined at the beginning of the period?

Mr. Webber. I do not have a recollection of having that knowledge.

Senator Levin. All right. Were you aware, that if a payment was not made, that the only remedy would be that the stock would revert to the prior owner?

Mr. Webber. I do not have a recollection as of that time.

Senator Levin. Now, according to the date that you signed your memorandum of January 30, the value of the stock that was transferred to Mr. Mariotta in this concocted transfer, the trading price value on that day was more than $40 million.

Now there are only two possibilities that I see, Mr. Webber. Either Mariotta could afford to buy that stock, or he could not. If he could afford $40 million to buy the stock he quite clearly would not be economically disadvantaged in my view.

If he could not afford it, the whole thing would be obviously a sham, and, either way, Wedtech would not be eligible. If it was a sham they would not be eligible, and if he were not economically disadvantaged, he would not be eligible.

I am wondering whether or not you did not see it that way, that either he had $40 million, or it was phony, and if he had $40 million he was not eligible, and if it was phony it was not going to make them eligible.

Why did that not just jump out at you?

Mr. Webber. I think I see it that way today, clearly. This does not jump out of the opinion that was prepared by the staff. I am very sorry. This was a case that I did not go into the file as deeply as I should have gone into the file before signing it. In many cases, I do go into the files, the documents, and so forth, before signing. I do not recall the situation, or the other pressures that I might have had that day in my office.

I do not think this is my normal practice, to sign something when, on the face of this opinion, the facts were not clearly expressed, the issues were not stated, the legal analysis was not there, and the opinion is not a good opinion in itself. It should not have been signed.

Senator LEVIN. Wouldn't you agree this was not just some routine case? This was the first public sale——

Mr. WEBBER. I would certainly agree, sir.

Senator LEVIN. This was not one of 500 pieces of paper on routine cases. This was the number one, first time that there had ever been a public sale by an 8(a) company. And by the way, had you ever seen a transfer like this before?

Mr. WEBBER. No.

Senator LEVIN. So this was not just an everyday transaction, was it?

Mr. WEBBER. No, it was not.

Senator LEVIN. All right. My time has expired. Senator Weicker, do you want to pick up?

Senator WEICKER. No questions.

Senator LEVIN. I also just want to remind you that your own letter, your own opinion letter of January 30th does acknowledge that the fair-market price was not determined in that so-called sale agreement, it was going to be determined at a later date, and that a critical percentage of your letter points out that Mr. Mariotta's stock is subject to deferred payment and accordingly is held in escrow.

So you were aware of that in your letter.

Mr. WEBBER. And we said that that should be followed, and, very carefully.

Senator LEVIN. Indeed. So it was an unusual transaction.

Now, Mr. Webber, let me ask you this question. Do you believe that an 8(a) firm should be permitted to base its eligibility on temporary control of stock by an individual who has never paid, and may never pay for that stock?

Mr. WEBBER. I do not think we can legally, as a legal matter, look behind the transaction and determine whether there was a valid transfer. Every document that we had in our file did indicate a valid legal transfer of ownership to Mr. Mariotta in this case.

If you are looking at what our policy should be in the future, I would say that there should be parameters established, if there is to be a deferred payment involved in any of the stock transactions. That the agency should look at that from a policy standpoint, and create policies to take care of this problem.

There was no such policy at that time. I am saying that had I detected, and had this jump out at me at that time, I would have gone to the policymakers and said, as a legal issue, ownership is vested in the disadvantaged individual, but we are setting a precedent here that is dangerous, that will open the program to future abuse, and I think we should have caught that.

Senator LEVIN. Would you agree that legal ownership may have been vested but equitable ownership was not vested in the minority owner?

Mr. WEBBER. Again, how can we sit in Washington and make that determination?

Senator LEVIN. Because you knew that——

Mr. WEBBER. I do not think that——

Senator **Levin**. You knew the stock had never been paid for and you knew it was in escrow, and you knew that if it were not paid for, that all it would do would be revert to the former owner, and you knew that there was no delivery.

Now those are all indicators of ownership.

Mr. **Webber**. That does not mean that all of those provisions could not have occurred, that it could not have been a legitimate deal.

Senator **Levin**. But they had not occurred, and that was known to you.

Mr. **Webber**. But we said: we have to watch this.

Senator **Levin**. Are you now looking at regulations to try to prevent these kind of concocted transfers where there is no payment, no delivery, and no binding obligation to pay in the future? A simple reversion of something back to another person? Are you looking at that now in terms of your regulation?

Mr. **Webber**. Yes, sir. We have looked at the information that we furnished the Committee on the other concerns and I think that two of the concerns, appear on their face, at least, to be quite appropriate. I do not think either of those concerns had ever come to the attention of my office. I have not looked at the fourth concern, but I think the problem of ownership must be looked at again and I think new regulations will be forthcoming on that.

Senator **Levin**. Isn't it awfully easy to concoct a transaction to bypass the purpose of the 8(a) program if we do not look at the ownership issue? It is so easy, it would seem to me, in order to create a company to get a sole-source, noncompetitive contract, go to a minority friend and say, hey, here is 10 percent of the stock of a company I am creating. I am going to put the other 90 percent of this stock in escrow to you for this huge price and I know you are never going to be able to pay for it, but here is 10 percent of the stock of this company.

You can control the company. We are going to get a contract, we think, as a result. You are going to be better off because you own 10 percent of a company that is going to get a contract. You do not have to pay me anything for it, and I am going to own 90 percent of this company and we are going to get this 8(a) contract without any competition. Wouldn't it be awfully easy to bypass the whole purpose of the 8(a) program with these kind of sham transactions?

Mr. **Webber**. It has been easy in the past, sir. The Agency investigated all of our companies for ownership, approximately some 6 or 8 years ago. I forget the particular year. We investigated 2,000 companies and I think the Inspector General found 250 of those with suspect ownership.

Senator **Levin**. But I am talking about this whole escrow concoction.

Mr. **Webber**. Well, that is just a part of the deals that sham companies have entered into.

Senator **Levin**. OK.

Mr. **Webber**. I think I can show you several opinions that our office has written, that has negated such transfers and stock deals as you are talking about. While we have made a few public offerings we have also turned down a number of other proposed deals that 8(a) concerns have made to us. We have done that on the basis of taking a close look at the ownership.

Senator **Levin**. Would you approve this transaction today, knowing what you know?

Mr. **Webber**. No.

Senator **Levin**. On the ownership issue, because of what we——

Mr. **Webber**. I would not issue the opinion as necessarily broad in a legal question. I would look at this primarily as a policy question—that we are opening the door to abuse and there has to be a new policy initiated to stop it. I am not sure that in hindsight I could say today that there was legal authority to stop this at that time. I should, as I said, I should have gone back to the boss and I should have said, this is a bad deal, had I known about the 10 year pay out.

But I cannot think that if I sat in those meetings with Luhlier and other people that your staff has mentioned, that that 10-year period came out of those meetings, or that I ever had that knowledge, because it would not have been likely to have accepted that on its face. I know how I look at things.

Senator **Levin**. It kind of makes the whole thing a sham, right?

Mr. **Webber**. Yes.

Senator **Levin**. OK. Mr. Webber, we are joined now by Senator Cohen and before I move over to Mr. Matthews—well, let me just ask Senator Weicker whether he might have any questions at this point.

Senator **Weicker**. I have no questions at this time.

Senator **Levin**. All right. Let me just ask you one question before I move either to Senator Cohen or directly to Mr. Matthews. How is this different, this what you now call a sham sale, how is this any different from an option to buy with a transfer of voting rights and dividends, if there ever would be dividends, which there never were, but how is this any different from an option to buy? Legally?

Mr. **Webber**. Well, there was a transfer of ownership. That is the main difference. In some State laws, with an option to buy, the ownership does not pass.

Senator **Levin**. Can you give us one case where something is transferred to an escrow agent, where there is no payment made, where the only binding obligation if payment is not made is for something to revert? There is no specific performance and there are no damages, no delivery, no right on the part of the buyer to sell. Can you give us one case, where in those circumstances, the equitable title to a piece of property has been held by a court to be transferred? Now, remember what I am saying here now. We are talking lawyer-to-lawyer. The so-called buyer does not get possession.

Mr. **Webber**. I think there was delivery, sir.

Senator **Levin**. No, to an escrow agent.

Mr. **Webber**. I know, but that, I think, would be delivery.

Senator **Levin**. Let me just give you my hypothesis and then I will ask you my question. No delivery to the buyer. He cannot take physical possession of the property. That is fact number one. He did not have physical possession of the property, the buyer here.

Mr. **Webber**. That was a collateral issue. That was simply to provide security.

Senator LEVIN. Of course. Let me just finish now the facts. Under this fact situation, no delivery to the buyer, no payment by the buyer, a future price to be determined later. If that price were not paid, a simple reversion of the property back to the so-called seller with no damages and no specific performance. Can you give us one case here where any court has said that equitable title to that property is transferred?

Mr. WEBBER. I cannot do that today.

Senator LEVIN. OK. Let me add he could not sell those shares either. Let me now move to Mr. Matthews. Mr. Matthews, you are the Regional——

Mr. MATTHEWS. Counsel.

Senator LEVIN. Counsel.

Mr. MATTHEWS. That is correct, sir.

Senator LEVIN. For SBA and you were during the time of these events.

Mr. MATTHEWS. Yes, sir.

Senator LEVIN. Pardon?

Mr. MATTHEWS. Yes, sir.

Senator LEVIN. And in your prepared testimony, you state that the usual practice is for the district office, not the regional office of the SBA, to make eligibility decisions.

Mr. MATTHEWS. That is correct, or recommendations, depending on the situation.

Senator LEVIN. Yes. In the case of Wedtech, however, we know that the issue was considered at the regional level as well as the district level. In fact, I understand that regional officials actively discussed Wedtech's eligibility with district officials throughout the process. My question is this: Was it unusual for a recommendation of this kind to be made by the regional office, without coming to you or your assistant for an opinion?

Mr. MATTHEWS. Yes, sir, it was.

Senator LEVIN. It was unusual?

Mr. MATTHEWS. Unusual.

Senator LEVIN. And why do you think you were not consulted in this case?

Mr. MATTHEWS. I really cannot answer that. I would be speculating, in any event, but it was out of the normal procedures that we followed in that office at that time.

Senator COHEN. Could you tell us what you thought at that time?

Mr. MATTHEWS. I am sorry, sir?

Senator COHEN. Could you tell us what you thought about the situation when you were out of town and you came back and the decision had been made without going through you? What were your feelings at that time?

Mr. MATTHEWS. Well, I learned about it, as I think I put in my written statement, sometime in February. I learned about what had happened. I knew what the issue was prior to that time and I was rather surprised, to say the least, without going into great details of it.

Senator COHEN. Why were you surprised?

Mr. MATTHEWS. I had a gut feeling that, as I say, without reviewing the documents or doing any legal research, or preparing any formal opinion, that it looked kind of crazy.

Senator COHEN. It looked what?

Mr. MATTHEWS. Sort of crazy, to me, at the time.

Senator COHEN. This stock transaction?

Mr. MATTHEWS. From what I was told, and I was told by Mr. Rogers, as I put in my written statement, generally what had happened. It was much later before I actually looked at the documents.

Senator LEVIN. Now, your deputy, Mr. Hallock, told the GAO that this case was a political hot potato. Were you aware of your deputy's views? Did you agree with them?

Mr. MATTHEWS. I would agree with him. I would agree with that statement, certainly in retrospect.

Senator LEVIN. But did you agree with him then? Did you feel that this was a politically sensitive matter at that time?

Mr. MATTHEWS. I do not know that I would have characterized it, at that time, although certainly there had been a lot of publicity about the President's interest in the South Bronx and in doing something using the 8(a) program. I think that was a matter of public record.

Senator LEVIN. Is it true, Mr. Matthews, that in the fall of 1983, that you took the position that Wedtech was no longer qualified?

Mr. MATTHEWS. I may have said that informally. Yes, sir. In fact, I feel maybe I did in informal discussions in the office. As I put in my prepared statement, I was never asked for a formal opinion.

Senator LEVIN. But informally, you had expressed the view that they were no longer qualified?

Mr. MATTHEWS. That is correct, after the public offering.

Senator LEVIN. And that was because of the fact of the public offering, or because of the loss of control by the minority owner?

Mr. MATTHEWS. Well, the loss of ownership and control.

Senator LEVIN. And control.

Mr. MATTHEWS. By Mr. Mariotta.

Senator LEVIN. After you had expressed that opinion in those meetings in the fall, then comes January and you were not consulted.

Mr. MATTHEWS. No, sir, not to my recollection.

Senator LEVIN. Were you at all suspicious, at the time, that it might have been because of your views that you had expressed?

Mr. MATTHEWS. In all fairness, I do not think that I had any suspicions or feelings of that nature at that time. No, sir.

Senator LEVIN. How about in February, when you decided it was a crazy transaction?

Mr. MATTHEWS. No, I do not think so. You know, there were many other cases that we were working on, that I was working on, and Wedtech was not something that I had any daily contact with. In the normal course of events, I did not.

Senator LEVIN. But you did tell our staff that you were quite suspicious?

Mr. MATTHEWS. Yes, sir, and certainly later on, I became——

Senator LEVIN. No, no. You told our staff you were quite suspicious at that time.

Mr. MATTHEWS. Well, I was when I heard what had happened.

Senator LEVIN. Go ahead, sir.

Senator COHEN. I just wanted to follow up. Was it customary for you to pass some sort of judgment upon the legality of such a transaction? They normally come through you?

Mr. MATTHEWS. Sir, at the time, there was a policy that had been established by the then-regional administrator, that any 8(a) matter that came to the regional office for his signature, approval or recommendation that was going on to the Washington office, had to be reviewed by legal. These were all applications for becoming a certified member of the 8(a) program. Approval or request for advance payments, requests for business development expense—all facets of that nature were routed through the regional counsel's office, not me personally maybe, but Mr. Hallock or another member of my staff.

Senator LEVIN. Did it strike you as unusual that you happened to be out of town at that particular time it went through?

Mr. MATTHEWS. Well, I have since checked my payroll records and during the 2 weeks that seem to be in question here, the last week of December, 1983 and the first week of January, according to my payroll records, other than Christmas and the New Year's holiday, I was in the office. I had done some travelling just prior to that time and had done a lot of travelling in that period from July forward until February.

Senator LEVIN. You think now you were in the office, but if you were not in the office, your deputy clearly was there.

Mr. MATTHEWS. It would make no difference. Correct. The answer is yes to your question.

Senator LEVIN. So that either one of you, under normal procedures, should have seen that transaction before it was approved and involved yourselves in any approval process?

Mr. MATTHEWS. That is correct, sir. As a matter of fact, Mr. Hallock, at that time, I had passed the mantle of expertise in the 8(a) program to him, since I had been heavily involved in some of the events that Mr. Webber spoke of earlier.

Senator LEVIN. Mr. Rose told us yesterday that he did not ask you for a recommendation, that that was the job of the regional administrator. Is that correct?

Mr. MATTHEWS. In the normal course of events now, the normal process——

Senator LEVIN. No, then, then.

Mr. MATTHEWS. Pardon me?

Senator LEVIN. Then.

Mr. MATTHEWS. Well, then or now, our office provides information to the regional administrator and to the program official, such as Mr. Rose. Normally, the regional administrator, at that time, wanted our legal review, or an opinion, before he would sign off on something of this nature.

Senator LEVIN. Would normally Mr. Rose come to you to get that sign-off or would the regional administrator come to you after Rose gave him Rose's recommendation?

Mr. MATTHEWS. As a practical matter, what happens, and maybe Mr. Rose related this, he would write a letter of recommendation for his own signature, and he would prepare a letter of recommendation for the regional administrator on this or any other similar subject. He would then send the package to my office for legal review. When we finished with it, if we had changes or disagreed with the opinion—we look at it for legal sufficiency.

Are there sufficient documents in the file, sufficient information to support whatever the recommendation would be. If we find that is not so, we would return it to Mr. Rose's shop for whatever changes were necessary. Otherwise, we would pass it on with our written recommendation to the regional administrator.

Senator LEVIN. Let me be real clear on this. It is kind of an important point. The normal process at that time would be for Rose to prepare his own recommendation, a letter for the regional administrator, and then would send both to your office for your sign-off. If you did not sign-off, you would return them to Rose.

Mr. MATTHEWS. That is correct, sir.

Senator LEVIN. And that did not happen in this case?

Mr. MATTHEWS. No, sir.

Senator LEVIN. Senator Cohen?

Senator COHEN. Just a couple. After you first learned about Wedtech's public offering, did you think it was grounds for termination of the program?

Mr. MATTHEWS. Did I believe it was grounds?

Senator COHEN. Right.

Mr. MATTHEWS. Yes, sir, I think so. For one reason, they did not notify us.

Senator COHEN. That was the next question I was going to ask you.

Mr. MATTHEWS. I am sorry.

Senator COHEN. The fact that they failed to notify you according to the regulations, was that in itself grounds for termination?

Mr. MATTHEWS. I think it certainly was one, at least, a technical ground. Whether it would have been sustained on appeal, I do not know.

Senator COHEN. And then the second aspect of it was the loss of control?

Mr. MATTHEWS. That is correct, sir.

Senator COHEN. Would the mere fact that they had gone public be grounds for termination, in your judgment?

Mr. MATTHEWS. No. I do not think so. There was no statutory basis or regulatory basis prohibiting a company from—you know.

Senator COHEN. OK. So failure of notice and loss of control were the two main features that would disqualify them, in your judgment?

Mr. MATTHEWS. That is correct. Also, the economic status, that they may have risen—they were able to obtain, have access to capital, and——

Senator COHEN. Well, that is the next question. You say if they go public, through a public offering, and they have access to capital——

Mr. MATTHEWS. That is correct.

Senator COHEN. Now do you make an analysis, then, in terms of what the relative status, their economic status is vis-a-vis their competitors?

Mr. MATTHEWS. Well, one of the reasons for firms being in the program is that they do not have access to capital, and if they have shown, through a sizable public offering, as in this case, that they did indeed have the ability and capacity to raise large sums of funds, it would seem to negate one of the reasons why they were in the program.

Senator COHEN. So you have got at least two factors why they should have been disqualified, and a potential third. You have got the fact that they failed to notify you as No. 1. No. 2, the loss of ownership and control, and, No. 3, the fact that they made a public offering and had access to significant amounts of capital, would have been a factor to have taken into account as a third item, possibly leading to their termination from the program?

Mr. MATTHEWS. That is correct, sir.

Senator COHEN. All right. Do you every play any kind of a role in policy issues? Do you pass upon policy issues at all as counsel?

Mr. MATTHEWS. Not really.

Senator COHEN. In other words, the use of funds, for example, for the BDE funds, there was a request made for some $10 million for BDE funds. An objection was immediately raised to that saying, wait a minute, that is not the purpose of the funds, that is an extraordinary request, and the answer is no.

Mr. Templeman, I believe, testified to that yesterday. Then they came back with a proposal for $3 million. Would that have been within the realm of something that you would have looked at?

Mr. MATTHEWS. Yes, sir. As I just testified to the Chairman, Senator, our office would normally have reviewed a request for a business development expense.

I follow the policy myself, and Mr. Hallock, and whoever works in my office, we do a legal review. If we feel that it is not in keeping with either the intent of the legislation or the regulations, or against a Small Business policy per se, we will comment on that even though that is not strictly in our—you know—within our bailiwick. We feel free to comment on things other than just strictly legal issues.

They may be ignored, and that is okay, but I like to have it down on the record.

Senator COHEN. And would you feel free to comment in terms of the size of the loan?

Mr. MATTHEWS. Oh, yes, sir.

Senator COHEN. And would you find, for example, that a multimillion dollar section 8(a) loan, under these circumstances, would have been extraordinary, to say the least?

Mr. MATTHEWS. Oh, you mean in the business development expense, sir?

Senator COHEN. And the total package, in fact what they were looking for?

Mr. MATTHEWS. It is really a program decision. It is a program decision, not a legal decision. If there is documentation to support the amount, whatever it is, we can give our free opinion, which I said is a policy of my office.

Some people may not want to hear it, but we do it anyway.

Senator COHEN. We have got Senator Weicker here, and I am sure he is familiar with the statistics, but yesterday, we had testimony, for example, that the average loan was some $100,000, as I recall, on the BDE. Out of the 2,200 firms, I think the average was about $100,000.

Here, there was a request made for $10 million and they ended up with $3 million, a significant portion of the BDE funds for one firm.

Mr. **Matthews**. Well, as I recall, at least several years ago, the entire national allocation for that purpose was like $20 million for the whole country. So, it certainly was a significant amount.

Senator **Cohen**. I may have missed this in your testimony before to Senator Levin, but did you hear a discussion in your office about Wedtech being a well-connected firm?

Mr. **Matthews**. No, sir. I do not recall any specific discussion like that.

Senator **Cohen**. That there were no rumors floating around that special treatment was being given to this firm?

Mr. **Matthews**. Not that I recall at the time. I certainly know about it now, but I do not recall at the time.

Senator **Cohen**. Thank you.

Senator **Levin**. OK. Mr. Elbaum, let me address some questions to you.

You stated in your interview with Subcommittee investigators the following:

> Wedtech was able to make phone calls directly to the District Director and to the Regional Administrator while others would have to go to program people first. They did have access. It would be accurate to say they had quite a bit of access to the top people. Anyone who felt that they were not well-connected by virtue of the law firm would be fooling themselves. They were known to be politically well-connected.

Mr. **Elbaum**. Sir, I do not recall making that type of statement. I did say on the question, on an issue with regard to political influence, I did indicate that political influence—and I say that in my formal statement—that political influence would permit a firm such as Wedtech to gain access to a higher level as compared to a lower level, meaning to gain access in Washington, to gain access in a region, rather than in the district.

And in the Wedtech situation there was access in the region, and there appears to have been access in Washington, and there was access to the district. They had their choices, if you will, sir.

Senator **Levin**. And the conclusion you draw from that was that they were politically well-connected?

Mr. **Elbaum**. I would say yes, sir, they were politically well-connected.

Senator **Levin**. And they were known to be politically well-connected?

Mr. **Elbaum**. My feeling was, by that type of access, they would have to be politically well-connected. Yes, sir.

Senator **Levin**. Did you tell our investigators that they were known to be politically well-connected?

Mr. **Elbaum**. I do not recall, sir.

Senator **Levin**. You assumed that?

Mr. **Elbaum**. I would assume, by virtue of their access, that they were connected.

Senator **Levin**. Now your former boss, the New York District Director, Harry Tishelman, made a statement to us as follows: "That they were obviously politically well-connected."

Would you say you would agree with that?

Mr. **Elbaum**. I would agree with that, yes.

Senator **Levin**. Now you also stated in an interview with the GAO investigators that Wedtech issues were conducted mainly by the SBA regional and central offices, with very little input from the district office.

Mr. **Elbaum**. I do not recall making that statement, sir.

Senator **Levin**. All right.

Senator **Cohen**. You did not watch the Iran hearings, did you?

Mr. **Elbaum**. I am sorry, sir? [Laughter.]

Senator **Levin**. The question is whether something is contagious. That is the question here. [Laughter.]

Mr. Elbaum, we heard testimony about Wedtech's eligibility yesterday from Aubrey Rogers, who is the former Deputy Associate Administrator, and currently, Deputy Administrator in the New York Regional Office.

Now Mr. Rogers testified that he met with you, the Regional Administrator, Mr. Neglia, and possibly others, to discuss Wedtech's eligibility in late December 1983.

Do you recall such a meeting?

Mr. **Elbaum**. No, sir. I do not. The recollection I have is meeting with and requested—in fact this is again stated in my statement—on or about January 4, 1984——

Senator **Levin**. Hold off on January. I want to just——

Mr. **Elbaum**. No, sir. I do not recollect that meeting.

Senator **Levin**. Or meetings?

Mr. **Elbaum**. I beg your pardon?

Senator **Levin**. Mr. Rogers testified that he met with you and Mr. Neglia, and others, in meetings. You do not remember any meeting prior to January 1984?

Mr. **Elbaum**. There were several meetings, but I do not recollect that specific meeting, sir.

Senator **Levin**. To discuss the eligibility of Wedtech?

Mr. **Elbaum**. I do not recall that, sir. No, sir.

Senator **Levin**. Now it is Mr. Rogers' testimony, that during the course of the meetings in December, meeting or meetings in December, that you specifically stated that you could not rely on the opinions that SBA had received from Biaggi and Ehrlich about Wedtech's continued eligibility, for two reasons. One, Biaggi and Ehrlich were Wedtech's counsel, and, two, Biaggi and Ehrlich owned Wedtech stock.

Mr. **Elbaum**. That is an inaccurate statement, sir. I do not recall ever saying anything like that.

Senator **Levin**. He also testified that as a result of those concerns, that it was agreed that the SBA would seek an independent opinion from a different law firm than Biaggi and Ehrlich. Do you remember that?

Mr. **Elbaum**. No, sir.

May I suggest this to you, Mr. Chairman. That in many instances, excluding the 8(a) program, SBA seeks opinions of counsel that are perhaps, let's say, affiliated with banks, affiliated with borrowers, where there are interests involved.

I do not recall ever making that statement nor do I believe that I ever would have made that statement.

Senator **Levin**. All right. Now when did you first see the legal documents that transferred, purportedly, the stock to Mr. Mariotta, and the legal memorandum in support thereof, and the escrow agreements? [1]

When did you first see those documents?

Mr. **Elbaum**. I believe that was either January 3rd or January 4th, sir. My recollection is around that time.

Senator **Levin**. So that you had never, prior to then, seen an opinion by the Biaggi firm and expressed dissatisfaction with it?

Mr. **Elbaum**. No, sir. Well, let me say this to you: I do recollect, that on or about January 4 or January 3, I had a meeting, or I was called to the office of Mr. Neglia, who was the person who had requested I review the documents, and that I indicated that the documents that he had were insufficient, and that I did not have an opinion from underwriting counsel.

I wanted an opinion with regard to SEC compliance. Mr. Neglia informed me that time was of the essence because there was a conference of some kind in Washington with regard to a contract that was to be awarded to Wedtech.

Senator **Levin**. Was that a pontoon contract?

Mr. **Elbaum**. I do not know, sir.

Senator **Levin**. Was it a Navy contract?

Mr. **Elbaum**. I do not know, sir.

Senator **Levin**. All right.

Mr. **Elbaum**. I was just told that I had to make a determination, or the district had to make a determination as to whether Mr. Mariotta continued to maintain a controlling interest in the Wedtech firm, and that Washington could not—whoever Washington was—could not move until that opinion was made.

Senator **Levin**. All right. Now, Biaggi and Ehrlich supplied a memorandum dated January 4, 1984.[2] Is that correct?

Mr. **Elbaum**. Yes, sir.

Senator **Levin**. And did you read that memorandum?

Mr. **Elbaum**. Yes, sir.

Senator **Levin**. This has to do with the validity and the effectiveness relative to the transfer of stock.

Mr. **Elbaum**. Yes.

Senator **Levin**. That was dated January 4.

Mr. **Elbaum**. Yes, sir. And let me say this to you. I think that at the time that I had spoke to Mr. Neglia, he had that in his possession, and that later that morning, I think, the Squadron letter was hand-delivered, if I remember correctly.

Senator **Levin**. All right. So that that day you were handed, for the first time——

Mr. **Elbaum**. That is my recollection. Yes, sir.

Senator **Levin**. Let me just outline, now, the documents you were handed.

Mr. **Elbaum**. Yes, sir.

Senator **Levin**. You got a Biaggi and Ehrlich memorandum in support of the transfer of the Wedtech stock. You were handed the Squadron memorandum. You were handed——

Mr. **Elbaum**. Later on.

Senator **Levin**. I am saying that day.

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[1] See pp. 329–357.

[2] See p. 357.

Mr. ELBAUM. Yes, sir.

Senator LEVIN. That was January 4. Let me go through it again. On January 4, you were handed for the first time the Biaggi and Ehrlich memo, the Squadron memo, the Squadron letter, the stock-transfer agreements? [1]

Mr. ELBAUM. Yes.

Senator LEVIN. And the escrow agreement?

Mr. ELBAUM. Yes, sir.

Senator LEVIN. And you were asked to give——

Mr. ELBAUM. Render—yes. Let me emphasize this. My opinion was supposed to determine whether or not, by virtue of these agreements, whether (a), whether the agreements were valid, binding and enforceable, and whether or not, by virtue of these agreements, Mr. Mariotta continued to have 53-percent control, or, continued to have control.

Senator LEVIN. Were you given a deadline for your opinion?

Mr. ELBAUM. No, sir. But I was told that it had to be fast because of something that was occurring in Washington. Yes, sir.

Senator LEVIN. And you rendered an opinion the next day?

Mr. ELBAUM. Well, I reviewed the documents the rest of the day on the fourth, and part of the day on the fifth, and then I wrote the opinion.[2] Yes, sir. And I was asked to write the opinion directly to Mr. Rose, and I think I did that.

Senator COHEN. Would you explain what you mean by Washington was in a hurry for it. What do you mean by that?

Mr. ELBAUM. I do not know. It is hard for me to explain. This is what I was told. That there was a conference supposedly occurring in Washington on or about that time, on the fourth or on the fifth, and that it had to do with a contract, and that until the issue with regard to the controlling interest of Mariotta was determined, they could not move, and therefore I had to render a "fast" opinion, if you will.

Senator COHEN. Was there any indication to you at that point as to how you should resolve it, in favor or against?

Mr. ELBAUM. No, sir. No, sir. The pressure on me was from the point of time. I would like to say this for the record. That there was no pressure with regard to—if I did not feel that Mr. Mariotta had 53 percent, Senator, I would have said that Mr. Mariotta did not have 53 percent.

Senator LEVIN. Now you were given an opinion relative to the transfer by Biaggi and Ehrlich?

Mr. ELBAUM. Yes, sir.

Senator LEVIN. Did you read that opinion?

Mr. ELBAUM. Yes, sir.

Senator LEVIN. And did you feel that that opinion was supportive?

Mr. ELBAUM. I primarily—let me say this: I primarily concentrated on the documents themselves. I looked to the documents, the transaction, to determine the intent of the parties.

You raised an issue, Mr. Chairman, before, with regard to the option question. Clearly, from the documents, the intent of the party was to transfer this stock, and based upon everything that I wrote—and that was just one factor, the opinion of Biaggi was one factor. The opinion of Squadron was one factor from the point of view of SEC compliance, if you will.

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[1] See p. 357.
[2] See p. 363.

But primarily, my primary concern was the agreement among the parties, and it was clearly the intent to transfer that stock.

Senator LEVIN. That is what the document said?

Mr. ELBAUM. Yes, sir.

Senator LEVIN. You do not know what the intent was? You know what the document said?

Mr. ELBAUM. Yes, sir. I can only base it on what is in front of me. That is correct.

Senator LEVIN. Now let's talk about something else that was in front of you. This Biaggi memo that was in front of you, which you said you took into consideration, I guess relied on in part—is that fair?

Mr. ELBAUM. Yes, sir.

Senator LEVIN. Said that the transfer of stock was paid in U.S. currency. That is what was represented to you in that memo.[1]

Mr. ELBAUM. Yes, sir.

Senator LEVIN. Was it paid?

Mr. ELBAUM. I do not know, sir. I do not recall that.

Senator LEVIN. Well, you know it was not paid for?

Mr. ELBAUM. Well, as I say, I do not know.

Senator LEVIN. Well, you know that——

Mr. ELBAUM. Well, let me say this to you.

Senator LEVIN. Well, wait a minute. Now the documents that you say you relied on said it was not paid for.

Mr. ELBAUM. Well, the document—then I missed it, sir. The documents with reference to the stock that was to be—and you brought this up before, sir—I would suspect that there would be much difficulty in determining the value of the stock since the stock was investment stock and I do not think there would be a market for investment stock.

Senator LEVIN. The "New York Times" that day had a market for that stock.

Mr. ELBAUM. When?

Senator LEVIN. That day, that you wrote your opinion.

Mr. ELBAUM. Well, it is investment stock, I think, that the SEC would require a 2-year wait before sending a no-action letter.

Senator LEVIN. Oh, you are not talking about Wedtech stock. You are talking about the stock being transferred?

Mr. ELBAUM. I am talking about the Wedtech stock that was transferred. That was investment stock. My understanding was that it was investment stock and not part of the public float, sir.

Senator LEVIN. All right. But you will agree that Wedtech was being transferred, publicly?

Mr. ELBAUM. Yes, sir. Oh, yes.

Senator LEVIN. Now let's talk about that investment stock.

It was your understanding that that could not be sold for 2 years?

Mr. ELBAUM. Yes, sir. Yes, sir.

Senator LEVIN. And where did you get that understanding from?

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[1] See p. 359.

Mr. **Elbaum**. Just based on past experience. It is my understanding, where you are dealing with a public corporation, and you have investment stock, that the 2-year period has to transpire, and then a request has to be made of the SEC to obtain what they call a no-action letter. I might be wrong about that.

Senator **Levin**. Well, you are wrong, you are wrong.

Mr. **Elbaum**. OK.

Senator **Levin**. And even Wedtech's lawyers represented to you that they could sell that stock during the 2-year period. It was right in their memo of law to you.

Mr. **Elbaum**. I do not recall that, sir. I am sorry.

Senator **Levin**. Well, one of the reasons you said you could not give any value to the stock was that it could not be transferred for 2 years and then—you did not check that with the SEC, did you?

Mr. **Elbaum**. No, sir.

Senator **Levin**. Did you check their regulations during that 24-hours you had all these documents?

Mr. **Elbaum**. No, sir.

Senator **Levin**. Why didn't you check the SEC regs?

Mr. **Elbaum**. My——

Senator **Levin**. Let me ask you: why didn't you check with the SEC?

Mr. **Elbaum**. I just never thought of it, sir.

Senator **Levin**. You reached a conclusion on what the SEC regs provided without looking up the regs, or checking with the SEC?

Mr. **Elbaum**. No, sir. I reached a conclusion that 53 percent of the stock was transferred to Mr. Mariotta, and that Mr. Mariotta did in fact have a controlling interest.

Senator **Levin**. But you also reached a conclusion, did you not, that that stock could not be sold during the 2-year period?

Mr. **Elbaum**. That was my own thought. There was nothing said in any memo of that. I just raised this right here as a possibility.

Senator **Levin**. Did you feel you were being rushed into this opinion?

Mr. **Elbaum**. From the point of view of handling, to some degree, yes.

Senator **Levin**. Did you ever see——

Mr. **Elbaum**. I will be quite frank with you. Had I been given 2 days, or 3 days, the probabilities are—and, again, I am talking about the issue involving the controlling interest of Mariotta only. I believe my opinion would have been the same.

Senator **Levin**. Well, let me again ask you this: if you had a chance to read the document, and consider the document, along with the Biaggi brief, wouldn't you have seen a conflict between what Biaggi represented, that the transfer of stock was paid in U.S. currency?

Mr. **Elbaum**. I might have picked it up. Yes, sir.

Senator **Levin**. You did not pick that up?

Mr. **Elbaum**. I did not.

Senator **Cohen**. Would it have made a difference, in your opinion?

Mr. **Elbaum**. I do not think so. I would have questioned it. I would have questioned it, and I think the end result—the end result probably would have been a statement issued by the Biaggi firm correcting whatever had to be corrected, and the transfer would have—you know—continued as is.

Senator COHEN. If the investment stock could have been sold within 2 years, and you were aware of that, would that have changed your opinion?

Mr. ELBAUM. No, sir. I do not think so, because, again, at the time, the issue before me—and I know I am repeating myself, sir—was whether or not Mr. Mariotta had a controlling interest in the Wedtech Corporation. And based on the information before me—regardless of my thoughts or anything else—based on the information before me, Mr. Mariotta did have a 53-percent interest, and I was asked, specifically by Mr. Neglia, to refer to the controlling interest.

Senator LEVIN. Let's just go into that a little more. I asked Mr. Webber whether he could give me one case where the equitable title to property was viewed by a court to have transferred, where, one, the property was not delivered physically to the buyer; two, the buyer had not paid anything for it; three, the price was not determined, it was a future price, whatever the market called for; and four, if the buyer did not pay for it 2 years later, the stock, or the property would simply revert to the owner without any damages, any right to specific performance.

Can you give us one case which says that the equitable title to property transfers under those circumstances?

Mr. ELBAUM. No, sir. I cannot.

Senator LEVIN. Well, did you do independent research on this after——

Mr. ELBAUM. No, I did not.

Senator LEVIN. Why not?

Mr. ELBAUM. It never occurred to me to do it. I relied on the contractual relationships of the parties. I relied primarily on the contracts, on what I read in the agreements.

Senator LEVIN. But you did read in the agreement, did you not, that no money transferred?

Mr. ELBAUM. I recall something like that. I did read that because money was supposed to have transferred later on.

Senator LEVIN. Two years.

Mr. ELBAUM. I think the first payment was in January of 1986.

Senator LEVIN. Two years later?

Mr. ELBAUM. Yes, sir.

Senator LEVIN. So you did read that no money transferred?

Mr. ELBAUM. Yes, sir.

Senator LEVIN. You did read that there was no price set?

Mr. ELBAUM. A price was to be determined by the market, I think, at the time of the first payment, if I remember——

Senator LEVIN. Two years later?

Mr. ELBAUM. Yes. That is correct.

Senator LEVIN. So whatever the market said those stocks were worth, 2 years later—excuse me.

Mr. ELBAUM. Yes, sir.

Senator LEVIN. You did read that there was no price set then. The price would be determined later. Is that correct?

Mr. ELBAUM. Yes, sir.

Senator LEVIN. You read that?

Mr. ELBAUM. Yes, sir.

Senator LEVIN. You read that there was no delivery to the buyer but to an escrow agent? You read that?

Mr. ELBAUM. Yes, sir. Yes, sir.

Senator LEVIN. You read that the buyer of the stock therefore was not given physical possession of it, is that correct?

Mr. ELBAUM. That is an assumption. The delivery, the holding by the escrow agent was, in a sense, the same thing that a bank would do in holding a pledge. That stock was pledged. There was ownership. There was voting rights.

That stock was pledged, and the escrow agent was holding that pledge, if you will.

Senator LEVIN. Let's go back to what you read because ownership is a complicated question. There are all kinds of indications of ownership.

Mr. ELBAUM. Yes, sir.

Senator LEVIN. And ownership has been fought over in courts for hundreds of years.

Mr. ELBAUM. Yes, sir.

Senator LEVIN. I think the first case I ever had in law school was a question of ownership in property law.

Mr. ELBAUM. Yes, sir.

Senator LEVIN. It is a complicated question.

Senator COHEN. Possession is 99 percent of it.

Senator LEVIN. Yes. And possession is a big part of it, and they did not have possession.

Mr. ELBAUM. And you look at the intent of the parties, don't you, Mr. Chairman?

Senator LEVIN. No, no. Let me go back to my question, Mr. Elbaum.

Mr. ELBAUM. Yes, sir.

Senator LEVIN. This is what you read.

Mr. ELBAUM. Yes, sir.

Senator LEVIN. The buyer did not get possession. The buyer did not pay anything. The price would be set at a later time. If the buyer did not pay for it, the only remedy was to get the stock back, no damages, no specific performance. That is what you read in those documents. Excuse me. Excuse me. You read that.

You cannot give me one case, nor did you do any independent research, where a court has found that equitable title transferred under those circumstances.

My question to you is, Having read all that, why didn't you do some research as to whether or not the equitable title transferred in those circumstances?

Mr. ELBAUM. I did not perceive the issues as you perceive them. I saw it as a simple transfer of stock pursuant to contract.

Senator LEVIN. Wait. Despite everything I told you, you thought it was simple?

Mr. ELBAUM. Well, perhaps. I saw it as a contractual relationship, and I saw it as an effective transfer of stock, and, again, I saw it from the point of view of controlling interest. The issue before me was did Mr. Mariotta have controlling interest, and he did, by virtue of those transactions, have controlling interest.

Senator COHEN. What was the consideration given?

Mr. ELBAUM. Beg your pardon?

Senator COHEN. What was the consideration given for the stock?

Mr. ELBAUM. The consideration? The consideration given was the dollars to be determined at a later time, sir.

Senator LEVIN. Is it not true that the SBA 8(a) program specifically requires not just controlling interest but ownership?

Mr. ELBAUM. Yes, sir.

Senator LEVIN. So you had to not only look at—excuse me, Mr. Elbaum—you not only had to look at the controlling interest, you had to look at the ownership issue. You did no research on the ownership issue?

Mr. ELBAUM. May I say this, Mr. Chairman. I was not asked to issue any statement—when these documents were given to me, Mr. Neglia, in his statement to me—and I quote—almost quote, I cannot quote him verbatim–does Mariotta have a controlling interest by virtue of these transactions?

And if you read my opinion, I refer to a controlling interest, sir.

Senator LEVIN. Not ownership?

Mr. ELBAUM. I do not recall referring to ownership. No, sir.

Senator LEVIN. Nor were you asked by Neglia about ownership?

Mr. ELBAUM. No, sir.

Senator LEVIN. But you do acknowledge that there had to be both ownership and controlling interest?

Mr. ELBAUM. Yes, sir, and I—well, all right. Yes.

Senator LEVIN. All right.

Senator COHEN. Just one other question I have. Do you think that the 8(a) program was designed to create large corporations? Did you express some concern about that?

Mr. ELBAUM. I did. I do not believe that the intent of Congress was to create, or is envisioned to provide contracts to the point where a firm is ready to compete with Lockheed, AT&T, General Motors, and things of that nature.

Senator COHEN. You did not buy Wedtech's argument about being economically disadvantaged?

Mr. ELBAUM. No, sir. I did not. I ran into a lot of trouble with that. If I recollect, I say so in my statement. I had to do some research. I did not think the opinion that was written by Wedtech was the greatest, but, nevertheless, it was an opinion, and it demanded an opinion from me, a legal opinion from me.

And my recollection is that that research was never completed because subsequent—and I think you are talking about October of 1985. Subsequent to October of 1985, I believe that there was some kind of secondary offering, of some kind, by Wedtech, which made the question moot. I think that is what occurred because I recall going into the district director and saying, well, the question with regard to the eligibility and the Lockheeds and the Bells, and all that sort of thing, had become academic.

Senator COHEN. To whom did you raise the objections, or at least questions about the policy issues, aside from the legal analysis you made? What about the policy issue of 8(a) being used or abused in this fashion?

Mr. ELBAUM. I do not recall getting involved in policy at all.

Senator COHEN. That is a policy issue, is it not?

Mr. **Elbaum**. Well, the issue was raised. I can say this to you: the issue was raised, according to my notes, in a meeting that was held in October of 1985 with regard to the continued determination of Wedtech, by virtue of the lack of economic disadvantage, that they had overcome the economic disadvantage status.

Senator **Cohen**. Had you raised it prior to 1986?

Mr. **Elbaum**. I do not recall, sir. I do not remember.

Mr. **Webber**. Senator Cohen, could I add to your question something that has bothered me I think for many years, and that is this very question that you have asked.

I think there is a prevailing view in some areas that affirmative action for the program means that we should have a cross-section in developing minority business, of business itself. You have your large businesses, you have your medium businesses, you have your small businesses.

I think, on the other hand, when you look at affirmative action, you look at it from the standpoint of bringing the minorities into parity with a norm of all businesses and that would seem to indicate that there should be a cap, or a maximum amount of assistance that should be granted under the program.

I think the direction that we have received from Congress has basically been—particularly by the enactment of the pilot programs, the Army pilot program, the Department of Transportation pilot program, and so forth—that we should develop a cross-section of business, small and large.

And that there should be large businesses in this program that are not necessarily looked at as disadvantaged, after they once are found eligible to be in the program.

So, I think from the Congressional direction the agency has received over the years, the answer is that "yes," there can be large businesses in this program, and I think the signals have been "yes," we should have the ability to develop large businesses.

Senator **Cohen**. Let me tell you what the problem with that is. We have had a situation in this case where the 8(a) program is used to give millions of dollars to one firm to enable them to get started in a field for which they were not qualified before. They were sheet-metal workers, and now they are involved in building Army engines and Navy pontoons.

And so you start building them up, and they keep making the argument that we are too small to compete, even though we are going public with public offerings. They kept getting bigger and bigger.

And then the argument is made, we cannot pull the plug on them now because they are too big, we have got too many hundreds of people involved, and therefore, they are on a permanent life-support system, another welfare cycle created by this program, where the intent was to get them started, to get them enough of a line-of-credit to get people employed that could then start having a nice mix of Government contracts and private contracts.

And thereby get them on their own fee. In this case you had a firm that was nurtured, almost 99, or 95 percent, by virtue of Government contracts through the Defense Department and SBA as a sole-source contractor. And they fed them and fed them, to the point where they could not stop feeding them for fear they would die.

That, to me, is a perversion of the 8(a) program, not its fulfillment.

A professor, Drew S. Days, of Yale, has published a law review article in the "Yale Journal" in January of this year. As you know, Professor Days argued the Fullilove case before the Supreme Court when he was Solicitor General. He has some regrets now about the outcome of the decision. The various laws that are being enacted in the States and localities, are very simplistic laws with no parameters. They are opening this whole area of minority business enterprise into abuse after abuse.

I think the thrust of his article is that we have to sit back and seek legislation which puts parameters on these programs, which makes them into viable developmental pieces of legislation which will be acceptable to the broad spectrum of the people in the United States.

Senator **Cohen**. Some people thought there were some parameters. For example, when we talk about having public offerings which then raise the issue of whether or not a firm remains economically disadvantaged, the argument Wedtech, others, and perhaps yourself would come back with, saying, well, it is all compared to what? Economically disadvantaged compared to another small firm, perhaps not.

Economically disadvantaged compared to Lockheed or Rockwell, certainly. Therefore, let's keep them in the program. If they are allowed to make the argument that we are now in the defense business, and by virtue of being in the defense business we are not competitive with the big fellows, therefore, keep the money flowing—it seems to me that that is inconsistent with the general policy guidelines that have already been developed.

Mr. **Elbaum**. That sounds very much like the argument, Senator, that I was faced with in October of 1985.

Senator **Cohen**. And how was that resolved?

Mr. **Elbaum**. It was not resolved because I just refused to vote at this termination meeting, because I had to do research, never got to it. I had asked at the time for—it is in my statement, sir.

I had asked, at that time, for a complete breakdown of all of the available financing for Wedtech. There was an issue concerning SIC classification, for example. Do you determine the firm's existence or eligibility based upon one single contract under one SIC, or 20 contracts under three SIC numbers?

Do you look at the dollar value of the contract or, alternatively, do you just look at the total number of contracts to determine what business that firm is in?

There were several issues like that raised.

Senator **Cohen**. Aren't there also issues to be decided within SBA, at some point how much of a percentage of Government business there should be for any one firm? I mean, should any firm be allowed to be a 100 percent, or 90-percent, or 80-percent dependent upon——

Mr. **Webber**. Yes, sir. We have issued regulations that have established limitations on the amount of continuous support that can be given under the program, at least competitively.

Senator COHEN. Now is that a parameter, or is that——

Mr. WEBBER. That is a parameter, and if you should look at legislation that is being introduced in the House, legislation at this time is being favored that would remove those parameters.

So, I think there is a little hypocrisy here. There seems to be mixed signals coming out of Congress as to——

Senator COHEN. Well, what does the law say? What is the policy now? Forget about a bill being introduced in the House. There are 2,000 bills introduced in the House. There are 10,000 in the Senate, perhaps.

And what difference does it make to introduce a bill? What is the policy right now? What has been the policy?

Mr. WEBBER. That policy is not stated by Congress in the law.

Senator COHEN. What is the policy?

Mr. WEBBER. The policy stated by the agency today is to maintain discipline on the sole-source contract support.

Senator COHEN. What does that mean?

Mr. WEBBER. That we have a determination made for each company of what their maximum support should be.

Senator COHEN. What are the guidelines?

Mr. WEBBER. They are not guidelines that are well defined, I have got to admit that, and, as companies come in, those guidelines have been redefined almost——

Senator COHEN. Apparent there were no guidelines in effect with Wedtech, right?

Mr. WEBBER. Right.

Senator COHEN. But they are at 95 percent.

Mr. WEBBER. But I am talking about our regs that were issued just a year ago. I do not think that that regulation was in effect at that time.

Senator COHEN. Thank you.

Senator LEVIN. Thank you, Senator Cohen.

Mr. Elbaum, you just testified that you were not asked, relative to ownership, nor did you render an opinion on ownership. In fact you said you were asked about the controlling interest.

Mr. ELBAUM. Yes, sir.

Senator LEVIN. Now, as a matter of fact, your memo of January 5 says that "After reviewing all the above" you are referring to all those documents that came in, "it is my considered opinion that all of the agreements are valid, binding and enforceable, and that John Mariotta, by view of his ownership of approximately 53 percent of all the voting stock, does in fact have controlling interest."

So you did render an opinion on ownership.

Mr. ELBAUM. I stand corrected. Yes, sir.

Senator LEVIN. Now how did the Squadron opinion get—how was that obtained? You say you were not at any December meetings at which the Biaggi memos were looked at with some degree of disdain.

And you absolutely deny what Rogers told us yesterday, which was that you were at a meeting when——

Mr. ELBAUM. No, sir. I did not deny it was at a meeting, but I do not recollect any statement of the nature that was made at that meeting by me. No, sir.

Senator LEVIN. Okay. Now how was the Squadron memo of January 4——

Mr. ELBAUM. Well, the Squadron memo with regard to the compliance with SEC——

Senator LEVIN. The January 4 memo, the same day that you received all these documents.

Mr. ELBAUM. Yes, sir. It is my recollection that that was hand delivered after my conversation with Mr. Neglia.

Senator LEVIN. How did it happen to be obtained? Did you ask for it?

Mr. ELBAUM. Yes, sir.

Senator LEVIN. When did you ask for it?

Mr. ELBAUM. When I spoke to Mr. Neglia. That was probably on the fourth, the early part of—you know—early in the morning on the fourth.

Senator LEVIN. So early in the morning of the 4th, you told Neglia you had to get an independent objective outside opinion relative to the SEC——

Mr. ELBAUM. No, sir. I told him I needed an opinion from underwriting counsel. I needed an opinion from counsel with regard—underwrite—I think I used the term "underwriting counsel"—with regard to compliance with the SEC.

Senator LEVIN. And that same day you got one?

Mr. ELBAUM. Yes, sir.

Senator LEVIN. Did you believe at that time that Squadron was the underwriting counsel?

Mr. ELBAUM. Yes, sir.

Senator LEVIN. They were not. Does that trouble you at all?

Mr. ELBAUM. Well, it does now. I do not know if it would have changed anything at the time, sir.

Senator LEVIN. Well, I do not think anything would have changed anything. That is pretty obvious.

Mr. ELBAUM. I beg your pardon?

Senator LEVIN. I think it pretty obvious nothing would have changed anything. Your opinion was going to be written the way it was, regardless of a whole lot of things.

Mr. ELBAUM. Yes.

Senator LEVIN. But my question is, When that thing came in the same day that you asked for it, were you aware that the Squadron firm was a stockholder in Wedtech?

Mr. ELBAUM. I believe there was something in the prospectus with regard to——

Senator LEVIN. My question is, Were you aware, when you got that opinion, that the firm you were getting——

Mr. ELBAUM. I am not certain, sir. I cannot honestly say yes or no.

Senator LEVIN. Were you aware of the fact that they were an attorney for Wedtech?

Mr. ELBAUM. They were counsel to Wedtech. It was my understanding that they were counsel to Wedtech with regard to the underwriting, and if I am wrong, then I was wrong.

Senator LEVIN. Yes.

Mr. ELBAUM. Yes.

Senator **Levin**. That is right. No, no. They were not the underwriting counsel. They were counsel to Wedtech.

Mr. **Elbaum**. No, no. But it was my understanding that they were counsel to Wedtech. I had thought——

Senator **Levin**. They were not the underwriting counsel.

Mr. **Elbaum**. I had thought that they were the underwriting counsel.

Senator **Levin**. All right. Now you knew, when you got this document, the same day that you were writing your own opinion, or working on it, you knew that this Squadron firm was the counsel to Wedtech, did you not?

Mr. **Elbaum**. Yes, sir.

Senator **Levin**. But you are not sure you knew also that they were stockholders in Wedtech?

Mr. **Elbaum**. That is correct.

Senator **Levin**. And you deny saying, in December, that you could not accept the Biaggi opinion because the Biaggi opinion came from a firm that was the attorney for Wedtech and owned stock in Wedtech?

Mr. **Elbaum**. That is correct, sir.

Senator **Levin**. There is a direct conflict with you and Mr. Rogers on that point. Now, on January 4, the Acting District Director wrote a letter to Mr. Neglia in which he recommended an extension.[1]

Are you familiar with that?

Mr. **Elbaum**. An extension for what, sir?

Senator **Levin**. Of their program term.

Mr. **Elbaum**. No, sir. I am not.

Senator **Levin**. You are not familiar with the letter, through Mr. Rose, from the Acting District Director? That was your director, wasn't it?

Mr. **Elbaum**. I beg your pardon?

Senator **Levin**. Wasn't the Acting District Director your director? Mr. Shorr?

Mr. **Elbaum**. The Acting District Director—the District Director would have been Haggerty and the Acting District Director would have been Shorr.

Senator **Levin**. All right. So Mr. Shorr was the Acting District Director?

Mr. **Elbaum**. Yes.

Senator **Levin**. That was your district, wasn't it?

Mr. **Elbaum**. Yes, sir.

Senator **Levin**. So he was your director?

Mr. **Elbaum**. Yes, sir.

Senator **Levin**. And you are saying that you are not familiar with——

Mr. **Elbaum**. I do not recollect such a letter. No, sir.

Senator **Levin**. Would it surprise you to know, that the District Director, on January 4, before you rendered your opinion, wrote to the Regional Administrator recommending the extension of the program term?

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[1] See p. 362.

Mr. **Elbaum**. I do not know how to answer that. Generally, FPPT, or, program extension does not go through counsel. In many instances, both the District Director and the Deputy District Director, Mr. Shorr, would have stopped by my desk in terms of reviewing a letter that they sent out, but I do not recall that.

Senator **Levin**. Well, wouldn't the District Director have known that there was a question that had been raised about eligibility?

Mr. **Elbaum**. Yes, sir.

Senator **Levin**. So, how could he, without getting your legal——

Mr. **Elbaum**. I cannot answer that, sir. I do not know.

Senator **Levin**. My question is: Are you surprised, then, that prior to getting your opinion, since he should have known about the eligibility issue, that he recommended the extension of this term?

Mr. **Elbaum**. I cannot go into the Deputy District Director's mind, sir. I do not know.

Senator **Cohen**. He is asking you whether you were surprised.

Senator **Levin**. Are you surprised, now, is my question?

Mr. **Elbaum**. I would be surprised, now, that I did not see it, but I cannot say——

Senator **Cohen**. That is not the question he asked you. He asked you whether you would be surprised, now, knowing what you do, that he had issued an extension, or a recommendation for an extension, knowing at the time——

Mr. **Elbaum**. That there was an eligibility question?

Senator **Cohen**. Right.

Mr. **Elbaum**. Probably not, and I will tell you why, sir. If we had made a determination to terminate, there is a tremendous appellate process in the area of termination, and, it is conceivable that during this appellate process, if there were appeal after appeal after appeal, until it went before a hearing examiner, which could have been a year and a half down the road—it is possible, frankly, that the Wedtech Corporation could have still received contracts. There is that possibility.

Senator **Cohen**. But why would the District Director, or Acting District Director have given them an extension to qualify, if in fact he was going to terminate, or raise a question——

Mr. **Elbaum**. We cannot terminate, sir. We can only recommend termination.

Senator **Cohen**. Right. We heard about that yesterday. It has to be done in Washington.

Mr. **Elbaum**. Yes, sir.

Senator **Cohen**. And there is no time limitation on how long that can be held up?

Mr. **Elbaum**. Yes, sir. Yes, sir. I do not know. I cannot answer that. I do not know.

Senator **Levin**. OK. Let me ask a slightly different question. You gave an opinion to the Regional Administrator, right?

Mr. **Elbaum**. The opinion of January 5, I was directed by the Regional Administrator to respond to Mr. Rose.

Senator **Levin**. Now why was your opinion rendered to the region instead of to the district?

Mr. **Elbaum**. Because that is the way it was requested of me, sir. Usually—if you are looking for a pattern—the usual position would have been—and this goes back to, again, the political ramifications of having entry into different levels of Government.

Usually, a request for a legal opinion would come from our program people on the district level.

Senator LEVIN. At the district level?

Mr. ELBAUM. Yes, sir.

Senator LEVIN. But this one came from the regional level?

Mr. ELBAUM. Yes, sir.

Senator LEVIN. And did you know that they bypassed the regional counsel?

Mr. ELBAUM. No, sir. No, sir.

Senator LEVIN. When did you first hear that?

Mr. ELBAUM. Let me say this to you: I was told by Mr. Neglia that an opinion had to be maintained and responded to in the district. I was also told at that time that Mr. Rose was not there, and that my response should be directly to Mr. Rose. I was not aware of the relationship that Mr. Rose had, or what the policies were in the region with regard to the regional counsel looking over the opinions. I think it is a darn good policy, but I was not aware of that.

Senator LEVIN. Were you surprised that you, as the district counsel, were asked for an opinion by the regional administrator, rather than his asking his own regional counsel?

Mr. ELBAUM. No, I was not, because it is an issue that should have started in the district, frankly, not in the region.

Senator LEVIN. But then should not your district administrator have asked you for it rather than the regional administrator?

Mr. ELBAUM. Yes, sir. It should have gone to him. The letters, or whatever the documents were. I cannot argue that. The letters or documents, or whatever, were addressed to the regional administrator.

Senator LEVIN. How often was it that the regional administrator asked you, as the district counsel, for an opinion?

Mr. ELBAUM. Very rarely.

Senator LEVIN. To what extent did you rely on those legal memorandum from the Squadron offices and the Biaggi office?

Mr. ELBAUM. It is hard to put a—I think I relied more on the Squadron than on the Biaggi. On the Biaggi memorandum I was more concerned with the intent of the parties, and the transactions.

Senator LEVIN. Is it fair to say that to some extent you relied on both memoranda?

Mr. ELBAUM. Yes, sir.

Senator LEVIN. As a matter of fact you incorporated both memoranda in your own opinion, didn't you?

Mr. ELBAUM. That is correct, sir. Yes, sir. I did.

Senator LEVIN. And the implication, when you incorporate something in your own opinion, is that——

Mr. ELBAUM. There is reliance. Yes, sir.

Senator COHEN. Could I inquire. Why would you give the Squadron memo more weight since the Biaggi, since both had a conflict of interest?

Mr. ELBAUM. Well, you see it as a conflict of interest. I do not. I think where you are coming from, Senator, is the fact that they both had an interest, if you will, and this is not unusual.

Law firms, accounting firms, other service firms, take equity positions in companies, and I did not see that, frankly, as unusual.

Senator COHEN. And then offer legal memorandums in support?

Mr. ELBAUM. Yes, sir. Yes. The basis, the payment to the firm, is the equity position that they are taking. A firm starts out, and they may not have a pot. How are they going to pay counsel? If counsel thinks it is a good deal, he is going to say, well, all right. Let's make a—you know—I will take 2 percent equity, or 3 percent, or a point and a half, or whatever it is. This is not unusual.

Senator COHEN. That is fine. Well, they can make any arrangement they want.

Mr. ELBAUM. Yes, sir.

Senator COHEN. But the question I have is, on what basis do you, then, theoretically, as a disinterested party, sit back and accept the legal analysis of a transaction as saying this is consistent with the law? Don't they have a vested interest, at that point, in the firm——

Mr. ELBAUM. I think they do have an interest, but I also think, sir, that they are officers-of-the-court, they are attorneys, and as such, I have—you know—I accepted it.

Senator COHEN. If that was the case, we would have no conflict-of-law statutes.

Mr. ELBAUM. I did not see it as a conflict, no, sir, quite frankly.

Senator LEVIN. Because they are officers-of-the-court, you accepted their opinion, you just said?

Mr. ELBAUM. Yes, sir. Well, I did not see——

Senator LEVIN. Well, sir, they owned stock in that company——

Mr. ELBAUM. I knew that.

Senator LEVIN [continued]. And they represent that company. Now they may be officers-of-the-court, but they are advocates and they are required—excuse me—they are required by the oath that they take to represent that company and to advocate its cause.

Mr. ELBAUM. Yes, sir.

Senator LEVIN. And you are sitting there and saying I accepted it and relied on it. Now if you are not troubled by that, I do not know what would trouble you.

Mr. ELBAUM. Senator, Senator, what if they owned 10 shares of stock?

Senator LEVIN. How many did they own?

Mr. ELBAUM. I do not remember. But what if they owned 10 shares of stock?

Senator COHEN. What if they owned 100,000 shares?

Mr. ELBAUM. What if they owned a single share? Would the question still be——

Senator LEVIN. How many did they own?

Senator COHEN. What if they owned a 100,000 shares?

Mr. ELBAUM. I do not recall, sir.

Senator LEVIN. And you did not find out, did you?

Mr. ELBAUM. I beg your pardon?

Senator LEVIN. You did not even ask, did you?

Mr. ELBAUM. I do not remember.

Senator **Levin**. Had you ever seen a transaction like this before? Ever?

Mr. **Elbaum**. No, sir.

Senator **Levin**. OK. This is the first time you got a transaction. It comes to you on January 4.

Mr. **Elbaum**. Yes, sir.

Senator **Levin**. You say, I have got to have an opinion from Squadron. It comes in that afternoon. You get at least—I do not know how many pounds of paper, or pages——

Mr. **Elbaum**. It was not that——

Senator **Levin**. Well, excuse me.

Mr. **Elbaum**. Yes, sir?

Senator **Levin**. You had never seen these before?

Mr. **Elbaum**. No, sir.

Senator **Levin**. You have a stock transaction.

Mr. **Elbaum**. Yes, sir.

Senator **Levin**. You have got an escrow agreement.

Mr. **Elbaum**. Yes, sir.

Senator **Levin**. Two of each, by the way, because there was multiple people involved. You have got memorandums of law from people who own stock in that company and represent that company, and you write an opinion the next day. You are not troubled.

Nothing seems to trouble you. I have got to be blunt with you. Nothing seems to trouble you. You said you accepted their opinion—now let me finish. You say you accepted the opinion of those lawyers. They are officers-of-the-court. Sure, I accept their opinion. You relied on their opinion.

Now I am telling you, we have got a right to expect a lot more of our counsel than that. We have got a lot more. This was a unique transaction, and you knew it. You knew it, and you write an opinion within 24 hours, having to review complicated legal documents where ownership is very complicated.

Not only did you reach a conclusion that the ownership really belonged to Mariotta, but you did not do any legal research on your own. You did no legal research on your own.

You get a memorandum which you say you rely on, from a firm which makes a misrepresentation right to your face, as it said the transfer of stock was paid in U.S. currency. It was not.

And I asked you, now, did you know it was not paid for and you do not remember. A pretty critical issue. The property was not paid for, but you do not remember that.

I have got to tell you, I do not know what it would take to say, hey, wait a minute, the regional office bypassed their own counsel. That did not seem to surprise you any, even though it was unusual. What would it take? Just what would it take, under these circumstances, for you to ask, hey, wait a minute, I am going to do some legal research into this thing; hey, wait a minute, could this guy ever afford to pay for this? And if he could not, was it not a sham transaction? Hey, wait a minute, he was not supposed to pay for this for over 10 years. This looks like maybe it is a sham transaction.

Nothing seemed to trouble you. What would it have taken?

Mr. **Elbaum**. I do not know, sir. I think that is a rhetorical question. I am afraid I cannot answer that.

Senator LEVIN. Could anybody structure this kind of an agreement again? Would you approve this?

Mr. ELBAUM. I am sorry?

Senator LEVIN. If this kind of agreement were structured again, would you approve this?

Mr. ELBAUM. Based upon what you are saying, I probably would look at it a lot more carefully.

Senator LEVIN. Thank you all for coming and testifying.

Mr. Sanders, please stand up and raise your right hand. Do you swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SANDERS. Yes.

Senator LEVIN. Thank you for coming and testifying today. I wonder if you might introduce the officer of the court to your left.

Mr. SANDERS. Yes. This is my personal attorney, Mr. James Bierbower.

Senator LEVIN. It is an honorable profession, and I happen to be a member. I am in no way suggesting otherwise by introducing you as an officer-of-the-court. I think in the context of the last questions it has a little different flavor, but that is intended to be an honorable compliment, sir.

Mr. Sanders, you are the former Administrator of the Small Business Administration. We asked you to come and testify today. Since we did not get your testimony in advance, we would ask you now if you would please present your statement.

TESTIMONY OF JAMES C. SANDERS, FORMER ADMINISTRATOR, U.S. SMALL BUSINESS ADMINISTRATION.

Mr. SANDERS. Thank you, Mr. Chairman, and thank you for inviting me here to testify in your review of the Federal procurement under the section 8(a), minority set-aside program of the U.S. Small Business Administration.

I would like my oral comments to be entered in the record. At the outset, let me state that I am concerned, as I am sure you are, Mr. Chairman, and Senator Cohen, that serious and undue damage has been done to the entire U.S. Small Business Administration, and particularly to the section 8(a) MSB program by the confessed criminal activities of the principals of the Wedtech Corporation.

The remarkable achievements of many dedicated career people have been obscured by the media attention to this singular scandal. To remove this stigma from innocent and praiseworthy civil servants, it is my hope that those guilty of intentional criminal activity are quickly brought to trial. By such action in seeing that justice is not delayed, we may set aside this tawdry story of fraud and deceit and clearly focus on the improvements in the operation of the section 8(a) program.

One must keep in mind that the story of Wedtech is one of greed run amok: officers of a company bringing it to its knees by plundering its treasury to bribe public officials and misrepresent the true financial condition of this company. Had these same principals devoted as much energy to managing the contracts, the company may have been viable today.

One may surmise that the criminal activity was so widespread that neither the defense agencies responsible for auditing nor the SEC at the time of public offering were able to detect a vital flaw.

In reviewing the operations of the section 8(a) program, it should be borne in mind that during the period from 1981 to 1985, large scale changes were made. First, there was a significant increase of 65 percent in dollar volume of contracts from 1.8 billion to 3 billion. At the same time, the first formal graduation procedures in the history of the program were instituted, eliminating all of the identifiable large firms who had a lion's share of the contracting.

Furthermore, the glaring disproportions of contract volume by different racial minorities, as well as by geography, was addressed in spite of massive resistance to these changes by a few large and well-entrenched firms. The casual critic of the section 8(a) program can easily point to the history of failures in the program without comprehending that the program is designed to provoke a high risk of failure if it is to be administered with an aim to expanding opportunities for disadvantaged business owners.

Furthermore, the risks of failure are increased when you adopt a goal in line with the spirit of the law to improve the level of sophistication of the firms involved, such as in the pilot programs asked by Congress, by including more contract opportunities in manufacturing and in medium to high tech performance. Too many section 8(a) firms have been involved in contracts limited to food preparation and landscape maintenance on military bases.

Supporting section 8(a) firms and making the step up to high tech is to accept a higher risk of failure. This risk can be reduced, however, by an insistence on better outside counseling with private consulting firms with established credentials.

This, incidentally, Mr. Chairman, was the substance of my recommendations before the Senate Small Business Committee oversight hearing on Federal minority business development on March 24, 1983, and it is an opinion that I still hold as the *sine qua non*, for improving the end result of the program.

Finally, if one were to simply focus on reducing the risk in this program as the main objective, it would be a simple matter to tighten up the financial and technical criteria so that very few firms would qualify for the SBA support. Furthermore, those who did could probably obtain the contracts outside of the section 8(a) program.

Of course, there is a middle ground which cries for a much greater emphasis on private sector outside consulting. By this, I mean mandatory weekly involvement in management by the consulting firm with reporting responsibility to the SBA. The disparity between the amount of section 7(j) funding and the much larger budget of MBDA for consulting would be a good place to begin.

Also, as I testified in the House Small Business Committee hearing on November 5, 1985, the emphasis in the section 8(a) program has been from the beginning on obtaining greater volumes of contracts without regard to development of management and technical skills without which no graduating firm can hope to succeed in the outside competitive world.

Finally, returning to Wedtech, what now appears to be the efforts by a few for personal gain of outrageous proportions, let me make it clear that I was contacted only once by any Government official on the subject of Wedtech, and that was by Mr. Jenkins who emphasized the Administration's desire, the President's desire to see that some employment be generated in the economically devastated South Bronx.

On the face of it, that seemed then, as it does now, a worthwhile objective, that it required an extraordinary commitment of business development expenses and advanced payment; it also seemed justifiable on the basis of requiring a step up in technology by the only firm in that area that was conceivably qualified for the transition to engine manufacturing. This was the recommendation of the district and regional office.

It was inconceivable at that time that this one company, while receiving praise and accolades all around, touted as an example of minority leadership, selflessly creating jobs for other minorities, could mock the entire process and purposely betray those whom they had given hope and deliberately deceive the very Government who reached out its helping hand.

From the record of recent indictments, alleged bribes to public officials crossed party lines, administration, Congress and local Government. How did so much activity escape detection for so long? What can we learn from all this? Did any of those bribed really affect any decisions? Did they conceal vital information that otherwise would have tipped off the agencies? Can regulations be written to prevent or detect early on such massive fraud?

I suggest that until the trial unfolds I do not think we will be able to have all the answers. In the meantime, Mr. Chairman, as you consider changes in the program, let me urge you to focus on problems more general and systemic than this singular massive fraud of Wedtech. With all of its problems, the 8(a) program has had many successes. For the minority firms honored, the trust and the privilege invested in them, I think we can learn from them as well.

Thank you, Mr. Chairman.

Senator LEVIN. Thank you, Mr. Sanders. You have been here this morning listening to the testimony. I am wondering whether or not you are troubled by the way in which the SBA attorneys on whom we all have to rely to review documents handled their work.

Were you troubled by what you just heard?

Mr. SANDERS. I am troubled, yes, by the mechanism that they approved once we determined the policy decision that we would allow the firm to go public. I am troubled.

Senator LEVIN. In other words, the mechanism which they approved, the transfer arrangement, the escrow arrangement troubles you?

Mr. SANDERS. That is correct.

Senator LEVIN. But the decision to allow them to go public had been made prior to that; is that correct?

Mr. SANDERS. That was a policy decision that was made. It was a breakthrough. It was new ground. It was considered. I have a recollection that we considered would it be unfair to a company as a general rule not to let it go public.

There has been a great deal of discussion this morning, Mr. Chairman, about the size of the company and the fact that if they succeed, they certainly are no longer economically disadvantaged. That was a constant question in my mind as I entered into this job and the many programs of the SBA. It seems apparent, and it was our policy, that if a company succeeds, having started in the 8(a) program, it will at one point in time no longer be economically disadvantaged. You simply do not throw it out of the program at that time. You follow along hoping to have a balance of outside contracting and inside until its graduation term.

So following along on that same line, it seemed at that time—and I am not so sure I would make the same decision now—that to prevent a company from going for public issues of stock would not be fair to the development of that firm.

Senator LEVIN. Now, the decision, then, to allow this firm to go public was a separate decision from whether or not the transfer of stock to Mariotta in order to keep 50 percent ownership would be an appropriate transfer; is that correct?

Mr. SANDERS. Yes.

Senator LEVIN. And it is that transfer that we focused on this morning that you say now troubles you when you see the mechanism.

Mr. SANDERS. That is correct.

Senator LEVIN. But the decision to allow Wedtech to go public and to maintain their participation in general, as a general matter, was a decision made at the highest level.

Mr. SANDERS. That is correct. That was a policy decision.

Senator LEVIN. And was that policy decision made prior to their going public?

Mr. SANDERS. No. I believe, if my memory serves me right, that was a decision that was forced upon us once we heard that Wedtech was considering going public.

Senator LEVIN. So your recollection is that it was only after they went public that you had to face that policy decision.

Mr. SANDERS. After they had decided to go public, yes. We had received the information that they were going to go public.

Senator LEVIN. And do you know how that information was received? Did they notify you the way they were required to?

Mr. SANDERS. From my own personal attention, Mr. Chairman, that would have just come up through the system. I don't know who they notified.

Senator LEVIN. You do not know how the bottom part of the system received that information?

Mr. SANDERS. I do not.

Senator LEVIN. All right. Now, there was a meeting on May 19th in the White House, May 19, 1982, at which your deputy, Mr. Templeman, was present. Prior to that May 19th meeting, I understand that you had lunch with Lyn Nofziger and that the two of you had discussed Wedtech's efforts at lunch to get an Army engine contract. Is that correct?

Mr. SANDERS. Yes. There were three of us at that lunch: Mr. Bragg and Mr. Nofziger and myself.

Senator LEVIN. Did you know either of them prior to that lunch?

Mr. SANDERS. I had met them. I had met them some time during my appearance in Washington at some reception, but I had never had lunch with them.

Senator **Cohen**. How long had you been director at that point?

Mr. **Sanders**. I had been director since March 29 of that same year, so I had been administrator for 15 days.

Senator **Levin**. Were either of them friends of yours?

Mr. **Sanders**. Prior to that?

Senator **Levin**. Yes.

Mr. **Sanders**. No.

Senator **Levin**. How about subsequent?

Mr. **Sanders**. Subsequent to that, friends?

Senator **Levin**. Yes. Did you consider them friends of yours, either one of them?

Mr. **Sanders**. They were acquaintances of mine.

Senator **Levin**. But not particularly you would not consider them friends?

Mr. **Sanders**. Not social friends, not that we exchanged—no.

Senator **Levin**. And the only contact you had had with either was a social occasion or two, reception or whatever, with Nofziger or Bragg before that?

Mr. **Sanders**. That is correct.

Senator **Levin**. What was the occasion for this lunch? Did you ask for it or did Nofziger or Bragg?

Mr. **Sanders**. I think they invited me to come to lunch, and I considered because of the prominence of Nofziger that it would be useful to do that.

Senator **Levin**. What was the purpose of the lunch?

Mr. **Sanders**. There was not any real purpose. I knew before I went to the lunch that their firm represented the Wedtech Company. That is not unusual, of course. Almost every 8(a) firm of any size at all has somebody representing them, a law firm or management consultant firm.

Senator **Levin**. The subject came up during the lunch, as I understand it, and can you tell us what you were told by them at that lunch about Wedtech?

Mr. **Sanders**. I do not really recall anything significant, Mr. Chairman. I know that they represented Wedtech and hoped that it would get the contract. But that was not persuasive in my mind. What was persuasive in my mind was that the White House wanted something to happen in the South Bronx.

Senator **Levin**. Just going back to that lunch for a moment, Nofziger and Bragg expressed the hope that the contract would be forthcoming to Wedtech?

Mr. **Sanders**. Well, yes. Before that lunch, I am sure I knew that they were hoping for their client to win a contract. They all do.

Senator **Levin**. Was the White House interest in that contract mentioned at that lunch?

Mr. **Sanders**. I do not recall that.

Senator **Levin**. Did Mr. Nofziger or Mr. Bragg mention that a White House meeting was going to occur relative to the Wedtech matter?

Mr. **Sanders**. No, I do not think they did, or I certainly do not recall it. I had known, I think, even at the time of that lunch of the White House interest in this event in the South Bronx.

Senator **Levin**. But, again, prior to this lunch, you had no discussion with anybody—let me ask you the question. Prior to that lunch, did you have any discussion with anybody relative to the Wedtech matter?

Mr. SANDERS. Well, I do not know when that—within a few days either side of that lunch was my conversation with Mr. Jenkins, and I do not recall exactly.

Senator LEVIN. Other than that possible date, before or after the conversation with Mr. Jenkins—which we will get to—other than that conversation with Jenkins, did you have any discussion relative to Wedtech with anybody prior to that lunch with Bragg and Nofziger?

Mr. SANDERS. Well, it would have been natural for me to have had some discussion with all of the regional administrators about large size contracts in any one of their regions, so it would have been quite natural that the regional administrator in that region would have brought this up.

Senator LEVIN. And how about outside of the SBA?

Mr. SANDERS. Pardon me?

Senator LEVIN. Outside of the SBA, prior to that lunch.

Mr. SANDERS. You mean persons not connected with the agency or the Administration?

Senator LEVIN. Or Jenkins.

Mr. SANDERS. Or Jenkins? Well, Jenkins was in the Administration.

Senator LEVIN. No, but I am being very precise. Other than people in the agency or Jenkins, did you have any conversation with anybody prior to the lunch with Bragg and Nofziger relative to Wedtech?

Mr. SANDERS. I may have had a conversation with Mr. Bragg. He may have phoned me; I do not know. I do not recall that, really. But it would have been quite natural that he would have.

Senator LEVIN. And that would be it?

Mr. SANDERS. Yes. I think that is the best of my recollection.

Senator LEVIN. No, but that would be the total number that you can now recollect of phone calls outside of the SBA or the phone call with Jenkins?

Mr. SANDERS. That is right.

Senator LEVIN. All right.

Mr. SANDERS. And no one at any time, may I assure you, Mr. Chairman, suggested anything was either against our regulations or would have been unethical.

Senator LEVIN. Two weeks later, now, on May 19, Jim Jenkins, the Deputy Counselor to the President, presided over a White House meeting to discuss Wedtech, at which Don Templeman represented the SBA. I understand that you were invited to the meeting, and Templeman went there on your behalf; is that correct?

Mr. SANDERS. I do not really recall that I was invited. They probably wanted someone from SBA. It was logical, though, that Templeman go because he had already dealt with this issue, and he was, incidentally, an expert in procurement.

Senator LEVIN. Were you briefed on the meeting?

Mr. SANDERS. I do not recall being briefed after the meeting. I am sure he did; he must have come back and told me that things were moving, because now what I read in the paper about the meeting, things did move forward.

Senator **Levin**. Subsequent to the May 19th meeting, you received a letter from Mark Bragg and a copy of a letter from Nofziger to Jenkins, following up on the meeting and requesting quick action on the Wedtech contract; is that correct? [1]

Mr. **Sanders**. I think that your assistant, Mr. Levine, furnished me that letter when he came to visit me. So that is my first recollection.

Senator **Levin**. After having been shown those letters, do you recollect them?

Mr. **Sanders**. I do not recollect them, but I am sure they occurred.

Senator **Levin**. Fair enough.

You have no doubt but that you received them?

Mr. **Sanders**. I have no doubt that I received them.

Senator **Levin**. Now, in the summer of 1982, you personally met with Jim Jenkins, as I understand it, who reiterated——

Mr. **Sanders**. I think it was April or May.

Senator **Levin**. All right. In the spring of 1982, you personally met with Jim Jenkins who reiterated the White House interest in ensuring that Wedtech get the Army engine contract; is that correct?

Mr. **Sanders**. I would characterize the statements Mr. Jenkins made as saying that the White House was interested in seeing that something happen in the South Bronx and the best prospect was through the 8(a) program, and it would appear that the Wedtech company was the only one that could do it. In that order.

Senator **Levin**. It may have been in that order, but when you got to the bottom line finally, did that not constitute in your mind the expression of White House interest in getting the Army engine contract for Wedtech?

Mr. **Sanders**. Well, let me put it this way, Mr. Chairman. I am not trying to split hairs, but the issue was to find a minority contractor to get something done in the South Bronx. If another contractor had appeared and another contract, that would equally be considered, I am sure. But after all, there were no others that were being put forth by our system.

Senator **Levin**. My understanding is that you told the Subcommittee staff that Jenkins stated that the White House—and here now we are using your words as they took them—had already worked on the contract with the Army and hoped it would come to a successful conclusion.

Mr. **Sanders**. Well, I do not recall that I would have remembered that much detail from the conversation. I think that I knew that they had already worked on the issue. The Army and Wedtech, or Welbilt, as it was known then, were negotiating and had been long before I came into the job.

Senator **Levin**. Did Mr. Jenkins express the hope that it would come to a successful conclusion?

Mr. **Sanders**. Oh, I am sure he did.

Senator **Levin**. Now, my time is up. We are going to have to go vote, but we will have a chance for at least one segment from Senator Cohen and then we will break after Senator Cohen's time and come back.

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[1] See pp. 272, 273.

Senator **Cohen**. Mr. Sanders, when you took over the SBA in 1982, is it correct that about 50 8(a) firms had about 35 percent of the business at that time?

Mr. **Sanders**. That is correct.

Senator **Cohen**. And did you decide to make a policy change in terms of trying to spread the work around or contract it?

Mr. **Sanders**. We made a decision to get all of the firms that were at that time larger than our size standards out of the program because they were dominating it, and we had a meeting with those firms. I can remember it well because it was August 14, and I gave them 6 months. And since that anniversary was on Valentine's Day the next year, they call it the Valentine's Day massacre.

So I remember it clearly, and I felt that that was a step forward in opening up the opportunities for other firms.

Senator **Cohen**. So you wanted to get more firms in rather than the top 50 or such?

Mr. **Sanders**. Exactly.

Senator **Cohen**. Now, I would like to ask a few questions about the Navy pontoon contract. How was the Navy pontoon project identified as a potential 8(a) contract?

Mr. **Sanders**. Well, the first part of that was a sea lift program that included another—the mechanism was not a pontoon. It was called a sea shed.

Senator **Cohen**. Made out in Illinois, as a matter of fact.

Mr. **Sanders**. That is correct; and also in Pennsylvania. The first contract went to a small firm in Renovo, PA, and the next one to a firm in Illinois, General Boxcar, I think it was. And then the announcement came from the Navy in normal channels. It came to my attention that they were going to expand this program and include pontoons, and it was all for the emergency sea lift operation that the Navy was building.

I stated at the time that I hoped that we would be able to have contracts on both the west coast and the east coast and the gulf coast.

Senator **Cohen**. Did not the Navy indicate at that time that the pontoon program was too complex for an 8(a) program?

Mr. **Sanders**. They may have. That was at a level below me that those negotiations went on and the technical considerations. I can only recall that when this came to my attention and I later wrote a letter to the Secretary of the Navy stating that I did feel that this was in line with the spirit of getting 8(a) firms in higher technology, just as the Army pilot project had been, and that this possibly could be achieved; that my own questions to our people were that I am sure that by the welding operation, some of these firms can accomplish the pontoons, but the self-powered pontoon portion troubled me a little. And I said how are they going to build the engines and the drive shafts for the self-propelled pontoon, and I was assured that those would be purchased outside. I had some questions about the linkage, and I was reassured that there was within these firms probably the capability, and that would be something to be addressed.

Senator **Cohen**. At the time that you asked for a set-aside, had Wedtech or any of its representatives asked you about the Navy pontoon contract?

Mr. **Sanders**. Well, I do not think at that time anyone asked me directly. I knew that Wedtech was one of the firms that would be interested. I knew of four or five other firms that had come to either visit the SBA offices or write in, and, of course, Senator, you should know——

Senator **Cohen**. When did you designate Wedtech as the SBA candidate?

Mr. **Sanders**. I do not recall the date. It was a long evolution of things. It is possibly up here on the board.

Senator **Cohen**. I think it is January 20, 1984; does that sound right?

Mr. **Sanders**. Well, I do not know.

Senator **Cohen**. You will accept my word for it?

Mr. **Sanders**. Yes, I will accept your word for it.

Senator **Cohen**. At the time that you designated Wedtech as the candidate for the Navy contract, do you know how it was performing on the Army contract?

Mr. **Sanders**. I am sure that at the time we were told that they were making progress on the Army contract. It was my concern in all these large 8(a) contracts—and there were a couple out of the Chicago office and the San Francisco office—that the regional administrators keep close tabs on these large contracts, and they advise me if there were any problems. I know that would have been in the course of examination to see that they were performing the other one.

Senator **Cohen**. Well, they were having problems with the Army contract in terms of their time.

Mr. **Sanders**. I do not know that I knew that at the time, Senator.

Senator **Cohen**. Would that have been an important factor to take into account?

Mr. **Sanders**. It certainly would have been.

Senator **Cohen**. Now, when you designated Wedtech as SBA's choice for the Navy contract, was the company qualified for a shipbuilding contract?

Mr. **Sanders**. I do not think that was—they certainly did not have that designation before. Let me also state that you have earlier stated that they were a sheet metal firm. I may be mistaken, but my memory tells me that they were more of a machine shop and they had a small subsidiary company that was the sheet metal company. When they were Welbilt, before getting the contract, I think you would classify them as a machine operation.

Senator **Cohen**. I think I said that they are a sheet metal operation. I was just repeating what was told to me yesterday.

Mr. **Sanders**. Yes. All right. Well, I wanted to clear that up. I think they had a little more sophisticated operation than that.

Senator **Cohen**. The Navy did not think they were sophisticated enough initially, certainly, on the pontoon.

Mr. **Sanders**. I recognize that. Incidentally, most of the military services, military departments, when considering 8(a) firms, never felt that they—it was a rather standard response. They did not feel that they were, and they were correct, by and large.

Senator COHEN. Well, the Navy and the Army have got a problem. They have got to get a product out into the field.

Mr. SANDERS. That is right.

Senator COHEN. And they are not too much concerned whether it comes from a minority firm or an all-white firm.

Mr. SANDERS. That is why the SBA has the advocacy for the program.

Senator COHEN. And once you designate a firm as the 8(a) choice, the Army or the Navy cannot exercise any discretion on that, can they?

Mr. SANDERS. Oh, yes.

Senator COHEN. Can they pick someone else?

Mr. SANDERS. They can certainly put up a lot of arguments. And, incidentally, we have yielded many times when it was obvious that they were beyond a question or doubt right, that the 8(a) firm could not perform the contract. We have yielded. We have no club.

Senator COHEN. But once you picked the contractor as the designee, the Navy or the Army or any of the branches have to work with that particular firm and show that they are unqualified before they can go elsewhere.

Mr. SANDERS. Well, that is basically right, yes. Of course, they can stonewall us and say, "We are not going to reach any agreement on price or performance."

I told our people as a matter of policy I never want to see an 8(a) firm or any other small business firm get a contract simply because they are small business if it threatens the performance of the vehicle or the people in the Armed Services, their safety. It is not worth it; that is not where we belong.

Senator LEVIN. We will take a 10-minute recess to go and vote.

[Brief recess.]

Senator LEVIN. Mr. Sanders, we have talked a bit about a couple of meetings in May of 1982; one, that lunch we have gone into a bit you had with Nofziger and Bragg; the other one, the May 19th meeting at the White House at which you were represented by Mr. Templeman, where Jim Jenkins, Meese's deputy, presided over a meeting. That was May 19th.

Prior to that date, on February 18, a letter was written by E. Bob Wallach to Don Templeman—the date is February 18th—in which he says the following regarding Welbilt, now Wedtech:

> This is a matter of true urgency which I bring to your attention during this hiatus period awaiting Jim Sanders' confirmation. For well over a year contract negotiations between Welbilt and the U.S. Army have transpired. They reached a point where action by SBA Administrator Cardenas was required in order to permit final price negotiations to commence. There is substantial interest in the rapid accomplishment of the issuance of this contract to Welbilt,

And so forth.

He talked about the Bronx and then said:

> While we recognize that there is an almost unavoidable tendency toward inertia during a period of change in leadership, human consideration as well as efficient economy should make this a priority undertaking for your office.

Then he wrote Mr. Templeman this: "This material is directed to you"—that is Templeman—"following a brief conversation I had with Jim Sanders. I was unaware of the fact that he had not as yet been confirmed and he suggested this course of action." He being you.[1]

Did you in fact have a conversation with E. Bob Wallach?

Mr. SANDERS. I do not recall any conversation with Mr. Wallach and I would not even recognize his name until this news of the whole event came out. I guess I should have known about Mr. Wallach being a San Francisco lawyer but I never heard of him until I——

Senator LEVIN. You did not have any such conversation that he refers to?

Mr. SANDERS. I recall no conversation at any time with Mr. Wallach. It's conceivable some guy named Wallach called me on the phone and I referred him to Templeman or something like that because I was not Acting Administrator. But it would not have registered as anybody.

I do not know what status or standing he had to write a letter like that to Templeman. Was he purporting to represent Wedtech or Welbilt?

Senator LEVIN. It is not obvious from the letter. I think it is obvious from other testimony what his standing is. It is not apparent in the letter.

Mr. SANDERS. Well, but I still do not understand it he had any—I do not recognize him as——

Senator LEVIN. It does not appear on this letter that he is acting on behalf of Wedtech.

Mr. SANDERS. I have only read since of his friendship with Mr. Meese.

Senator LEVIN. So you have no recollection of that conversation?

Mr. SANDERS. I do not.

Senator LEVIN. All right.

Mr. SANDERS. May I say also, Mr. Chairman, people sometimes would call me as Administrator that I do not remember their name and I would generally refer them to someone else. Most of the time those people did not even get to me. They were screened out unless I knew who they were.

Senator LEVIN. Mr. Sanders, in the summer of 1982 we understand that Mark Bragg called you on two or three occasions and visited you once in your office, all about Wedtech; is that correct?

Mr. SANDERS. That is probably correct. I could not count the times.

Senator LEVIN. He did call you on a number of occasions?

Mr. SANDERS. He called me a number—I would say he might have called me as many as three times over a period of 4 or 5 months.

Senator LEVIN. In 1982?

Mr. SANDERS. Yes.

Senator LEVIN. About Wedtech?

Mr. SANDERS. Yes.

Senator LEVIN. He visited you once also in your office?

Mr. SANDERS. I am sure he did.

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[1] See p. 270.

Senator **Levin**. In addition, you met with Mr. Steven Denlinger of the Latin American Manufacturing Association about Wedtech about the same time?

Mr. **Sanders**. Well, yes. Mr. Denlinger would come in with some frequency, like maybe two or three times a year to just register his point of view about Latin American Manufacturing Association and the amount of 8(a) activity going to Hispanics.

Senator **Levin**. Did Mr. Jenkins or Mr. Nofziger or Mr. Bragg—those three—ever contact you about or on behalf of any other 8(a) company besides Wedtech?

Mr. **Sanders**. Mr. Jenkins? No. Of all 3 of them, none of them ever mentioned anything nor was I ever aware that Nofziger or Bragg represented any other 8(a) firm. To the best of my recollection I do not recall that they represented anyone else in the 8(a) portfolio.

Senator **Levin**. Jenkins never contacted you about or on behalf of any other company besides Wedtech in the 8(a) program?

Mr. **Sanders**. That is correct.

Senator **Levin**. You have described this meeting that you had with Jenkins——

Mr. **Sanders**. As a matter of fact, I will go further than that. Mr. Jenkins never contacted me on any other subject. He only contacted me once, the once I mentioned.

Senator **Levin**. The one time he ever contacted you was about Wedtech?

Mr. **Sanders**. That is correct.

Senator **Levin**. Now, that was a personal meeting, you said, in the spring of 1982?

Mr. **Sanders**. That is correct.

Senator **Levin**. At the end of that meeting, after the discussion about the Bronx, it appeared there was one company, you indicated, that was eligible and that company was Wedtech and you acknowledged here this morning that Mr. Jenkins stated that the White House had hoped it would come to a successful conclusion with Wedtech. You acknowledged that earlier this morning.

Mr. **Sanders**. That is correct.

Senator **Levin**. Did you know that Mr. Jenkins was Mr. Meese's deputy?

Mr. **Sanders**. Yes.

Senator **Levin**. Did you assume that he was acting on Mr. Meese's behalf?

Mr. **Sanders**. Well, no. Not specifically. That is a logical conclusion. I think his statements about the South Bronx were more far reaching. We talked about the President's speech and his commitment to the South Bronx so, you know, that was more impressive than Mr. Meese's commitment.

Senator **Levin**. Putting aside what was impressive or not, did you assume that when he was there, knowing that he was Mr. Meese's deputy, that he was representing Mr. Meese at his meeting with you?

Mr. **Sanders**. Sure, and I was quite confident that Mr. Meese knew what he was doing.

Senator **Levin**. Your former deputy, Donald Templeman, testified yesterday that he went to that May 19th, 1982 meeting at the

White House prepared to commit the SBA to offer Wedtech $3 million of business development expense money and $2 million of advance payment assistance. He stated yesterday that he had doubts about the wisdom of this assistance and he never would have approved it but for the White House interest in Wedtech and this contract.

He concluded that—he so testified yesterday—that had there been no pressure from the White House, Wedtech never would have gotten the Army engine contract.

Do you agree with that testimony of Mr. Templeman?

Mr. SANDERS. Well, I think that—I did read Mr. Templeman's written submission last night. It was the first time I have had any detailed information about how that meeting went or the sequence of events. I was a little surprised that he went there prepared to commit those sums of money. I would assume—I do not recall it—but I would assume he would have discussed that with me since I was the one that had the authority to do it.

But, again, I must say that——

Senator LEVIN. Well, do you disagree with that?

Mr. SANDERS. I am trying to answer your question by saying, the prevailing reason for doing this, yes.

Senator LEVIN. I understand, again, what your prevailing reason is. My question is, he told us that he had doubts about the wisdom of the assistance and he never would have approved it or recommended it but for the White House interest in Wedtech and this contract. Now, do you disagree with that?

Mr. SANDERS. Do I disagree with——

Senator LEVIN. You were the one who finally had to approve it. Do you agree that but for the White House interest that $3 million never would have been offered.

Mr. SANDERS. Let me put it my way, if I may, sir. I agreed that if it had not been for the White House interest in acquiring something to give relief to the South Bronx it would not have been, probably, approved. In other words, I am trying to say that——

Senator LEVIN. I understand you are trying to talk about the South Bronx instead of Wedtech.

Mr. SANDERS. That is correct.

Senator LEVIN. But there was only one contractor that was eligible, is not that correct, in the South Bronx?

Mr. SANDERS. That is the only one that was offered to me.

Senator LEVIN. They were the only game in town.

Mr. SANDERS. That is correct.

Senator LEVIN. So when you say South Bronx you are saying in the same breath Wedtech because they were the only one eligible; is that right?

Mr. SANDERS. That is correct.

Senator LEVIN. Now, Templeman also concluded that had there been no pressure from the White House, Wedtech never would have gotten the Army engine contract. Do you agree with him?

Mr. SANDERS. Well, that is his opinion.

Senator LEVIN. Do you have the same opinion?

Mr. SANDERS. I do not have an opinion in that because I was not in those meetings where Army was present and arguing their side of the case. I acted on Mr. Templeman's recommendation.

Senator LEVIN. I understand. Now, on June 18 you signed a letter committing the SBA to provide Wedtech with an unprecedented $3 million business development plan and $2 million of additional advance payment assistance for the performance of that engine contract.[1]

First of all, would you agree that it was unprecedented in the amount, there had never been a BDE grant in the millions?

Mr. SANDERS. I think that is correct, historically.

Senator LEVIN. As a matter of history, that letter went out 10 days prior to Wedtech writing to the SBA to request the assistance so that your letter is dated June 18th to Mr. Mariotta saying: "SBA hereby commits itself to the provision of the aforementioned assistance subject to the following conditions," and you list them, but you made the commitment.

But on June 28 the letter came in from Welbilt, now Wedtech, saying that the purpose of this letter is to request the $3 million BDE support, so that your commitment came 10 days before the request, the formal written request from that company.[2]

My question to you is, why did you commit the SBA to this unprecedented amount of assistance without any prior working level review of the merits of the proposal?

Mr. SANDERS. Well, Mr. Chairman, I was surprised when your staff member, Mr. Levine, gave me these two pieces of paper, which of course I did not recall at the time. I was disappointed, too, that this appears to have been a procedure that is irregular.

I can only assume that I was told at the time that there was a deadline in getting this commitment back to Welbilt and they needed this commitment, if we, indeed, were going to make it at all. And I know at that time I was reassured that in spite of the extraordinary amounts involved, that this was, of course, indeed an extraordinary contract—unusual, outsized—and requiring this kind of investment in BDE to accomplish it.

But the fact that the letter requesting it came 10 days later to Mr. Neglia, I can only assume that under the best scenario that I was told it would be forthcoming; the worst scenario, I was deceived and manipulated.

Senator LEVIN. You were what?

Mr. SANDERS. The worst scenario was that I was deceived and told it had already been here and it had not, indeed. So I do not know.

Senator LEVIN. The letter does state on the first line that the Small Business Administration is in receipt of your request.

Mr. SANDERS. Mr. Chairman, it should be brought out that the letter of June 28 is addressed to the regional administrator and not to me. I assume I was told the regional administrator already had this letter and I should therefore write a response.

Senator COHEN. It does not say "written" request, either. Would it be impermissible or irregular to have an oral request and then follow it up with a formal letter at some subsequent time?

Mr. SANDERS. That is right, Senator. It would not be all that unusual. Sometimes these deadlines coming up required us to move quickly without all of the written stuff in our possession, so it could have been an oral.

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[1] See p. 274.

[2] See p. 275.

Senator **Cohen**. I just have a couple of other questions. At that time that you authorized the BDE and the advance funds totaling $5 million were you concerned about the size of that assistance at that time?

Mr. **Sanders**. I certainly was.

Senator **Cohen**. How did you manifest that concern?

Mr. **Sanders**. Well, I expressed that fact that—of course, obviously, I did not have a lot to compare it to—I had been in the job 2 months—but I was given the history of this. I knew the annual appropriation level of those funds and I knew this was a significant bite out of that. But I was impressed with the extraordinary nature of this.

Again, I go back, if it had been the ABC corporation instead of Welbilt, it would have suited me fine. But some company was going to do something in the South Bronx to provide minority employment. That seemed on its face to be the overriding most important 8(a) activity in the foreseeable future. It was then presented to me, as I recall, that this kind of money was needed to have this machine shop move up in its capability to make engine blocks for this 6-horse power engine.

That, again, I questioned. My background is engineering anyway, so I requested some more information about whether they indeed could do it for $3 million in equipment and I also had made it clear to the 8(a) personnel in the SBA that I did not want BDE to be used as a buffer for price adjustments. I wanted it to actually be invested in equipment and that was an assurance given me, that that is where it was going.

Then they had the working capital problem and again, I was reassured that this $2 million was not only needed as working capital but there was every expectation that it would be repaid. But it was extraordinary, Senator, and I knew we were biting off a big piece.

Senator **Cohen**. At the time that you advanced or authorized the assistance for the Army engine contract were you aware that Wedtech had received $4 million in advance payments on other contracts?

Mr. **Sanders**. I do not recall that but I do not deny that I might have been told that. I do not recall that.

Senator **Cohen**. See, the problem is, here you have a firm that was doing, prior to that point in time, about let's say $2 million a year in business suddenly getting $6 million in advance payments and $3 million in BDE funds from the Government. Did not that strike you as being a bit generous?

Mr. **Sanders**. That is and I do not recall——

Senator **Cohen**. Was anybody keeping track of how much money was flowing in?

Mr. **Sanders**. I do not know what the record says about the repayment of that other $4 million. Does the record reveal that that $4 million or some part of it was repaid in that year? I do not recall that. I am just trying to see if there was some statement about their ability.

Senator **Cohen**. Well, the record reveals they were getting money from one program and using it to pay off another.

Mr. SANDERS. I understand what you are saying and I recognize that as a danger signal, but I cannot recall at the time being told that.

Senator COHEN. I think you indicated earlier that one of the things that you wanted to do was to secure large non-traditional contracts that called for more advanced skills. In other words, move them up from a lower level of technology into a higher one and this decision was made at a time that about 50 firms got approximately 35 percent of the 8(a) contracts. So does not this actually contradict the policy decision to move away from giving 35 percent of the budget under 8(a) to 50 firms and now we are taking a big chunk of money and giving it to one firm, does not that in fact contradict the very policy of moving away and spreading the money around?

Mr. SANDERS. Well, I see what you are saying and I see how that is an apparent contradiction but I do not believe it really was, because the firms that we graduated out who were no longer small, a large firm, that had taken this large percentage—35 percent of all the total contracting—had been in the program almost from the beginning. They had had sufficient time. They had reached a level of performance that—not only because of their size but their level of performance—it seemed they should move out and make room for some others.

Senator COHEN. Make room for some others.

Mr. SANDERS. Yes.

Senator COHEN. What you did not mean was make room for one big company here. What you are talking about is making room for others but you are allocating the funds so you are not making room for others, you are making room for another.

Mr. SANDERS. Well, no. I do not agree with that. We expanded the level of contracting from $1.7 or 8 billion to $3 billion in 4 years. We made room for a lot more people to have contracts. But involved in that, yes. If you are going to get them involved in higher technology performance, that means bigger contracts and that was—if I may finish my last statement—that was one of the fundamental problems in the Defense contracting with minority firms. They were moving into more exotic fields.

Senator COHEN. OK. That means bigger contracts, it means fewer firms, by definition.

Mr. SANDERS. Yes.

Senator COHEN. Right?

Mr. SANDERS. Well, not necessarily fewer——

Senator COHEN. Or by mathematics.

Mr. SANDERS. Well, no. Divided into $3 billion, not $1.8 billion.

Senator COHEN. Well, we will look at the record. What did that constitute in terms of the amount of money—the BDE funds and the advance payments—what did that constitute in terms of the available funds?

Mr. SANDERS. That was a significant portion of the annual 1983 fiscal year budget for BDE.

Senator COHEN. All I am saying is, the two policies of moving the 8(a) firms up into a higher tech is inconsistent on the face of it in terms of trying to spread it around to get more firms involved. If you are going to go higher tech, you have to have a lot more money than was available to you. You would be better to achieve the other goal.

Mr. **Sanders**. I understand what you are saying, and it is not neat, I must admit. But the way to counteract the problem of having some few firms that will qualify for higher technology with large contracts is to increase the base of contracts, which we did over a period of 4 years.

I have got to tell you, it is not neat. There is nothing neat about this program.

Senator **Cohen**. I am not even sure it is doable, not to mention neat.

Mr. **Sanders**. Well, it is a high-risk situation and I think that is a policy we have to discuss, or certainly you have to decide; are you going to continue to try and develop firms with higher technology or shall we just abandon and put lower cap limits and say that this is really—incidentally, I have been on the record time and again at these hearings of saying I am not pleased with the size standards. I think they are too large. I am certainly not pleased with the lack of emphasis on development of the firms and I have long been against the SBA being involved in the negotiation of these contracts.

I think our job is to counsel these firms, develop them, and not be a third party to the contract.

Senator **Cohen**. Well, I would just conclude my comments. Senator Levin and I have been discussing for some time what is so frustrating about the oversight function and what is taking place within and without the Government. I think it is pretty standard operating procedure over the years and it has been that people are hired after they leave Government service, be it in the executive branch like yourself or congressional such as our own. And they are hired by Washington firms or New York firms, law firms, public relations firms to trade upon their expertise. At least that is the ostensible purpose.

But what has evolved is a rather cynical exploitation not of expertise but of influence and that is what is most, I guess, disappointing, shocking or even degrading about what has taken place here. You have a bunch of barracudas who seized upon a fat fish. Here you were trying to create some job opportunities in an area that was an economic wasteland and the people attacked that fish with a vengeance and pulled off millions of dollars for their own and let the fish itself die.

It is a rather shocking example of what takes place when people are hired not simply based upon their expertise but their access and their influence and how they can manipulate the system to their own economic advantage.

We can pass laws, and we will pass more laws, I suppose, barring certain types of employment, but there are always going to be ways of circumventing that.

The first thing that always hits my office is when someone leaves the Government because I get an announcement in the mail: Mr. X has joined ABCD firm. I suppose that they do not have to send Mr. X over to lobby someone in the Government. They can send an associate over and say, by the way, Mr. X passes on his high regards to you, letting that individual know that there is an association.

So there is always going to be a way to avoid it or evade it. But certainly we have to take more measures that currently exist to try and prevent a similar type of abuse in the future.

Thank you, Mr. Chairman.

Senator Levin. Thank you, Senator Cohen.

In your opening statement, Mr. Sanders, you addressed your feelings about the plundering of this company by the officers. What you did not touch upon is the huge amounts of money that were paid to consultants who were well connected politically. Some of those payments are up on that board as well.

Does that trouble you, too?

Mr. Sanders. Yes. I think the magnitude of the amounts of money—I spent a lifetime building a small business. I finally was lucky enough to have some large business want to buy it, merge it, and I know how long it takes doing it the old fashioned way. When I see these sums of money, it is very disappointing to me.

At the same time, let me say——

Senator Levin. Well, it is downright disgusting to me.

Mr. Sanders. That is right.

Senator Levin. You say "disappointing," is that the extent of your feelings, when you see millions being thrown around by a small business in order to obtain contracts with the Government, the sole-source, non-competitive contracts?

Mr. Sanders. If you will re-read my statement, you will see that my feelings go into beyond disgust, probably. I am angry. I am angry because of the enormous disservice it does to those people who try very hard to do an honest job and I believe in honest public service.

Senator Levin. What you have here is a perfectly appropriate feeling of a President that he wants to do something about unemployment in the South Bronx. And then you have got people who were formerly in the Administration, friends of people in the Administration cashing in on that for their own huge benefit, millions in their own pocket.

Mr. Sanders. And evidently, Congressmen.

Senator Levin. Alleged Congressmen included. I said people—well, you are right, I said administration. In Government and including the administration. I do not exclude them at all. There have been some indictments.

Mr. Sanders. And local Government.

Senator Levin. Absolutely. So you have got people in Government and friends of people in Government and former people who just left Government.

I mean, on that list you see the name, James Jenkins, $169,000. On that list you see Lyn Nofziger, $886,000. How long does it take a small business person to accumulate that? [1]

Mr. Sanders. A lifetime, if he is lucky.

Senator Levin. And Chinn and London, Bragg and Wallach. A $1.3 million, E. Bob Wallach, a name you never heard of.

Well that, it seems to me, one of the really major issues here is the way in which a perfectly legitimate statement of concern by a

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[1] See p. 269.

President about employment in the South Bronx is cashed in by people with political clout. And dammit, we are going to try to do something about it because we are also in charge of the ethics laws.

We are not in charge of the small business laws on this Subcommittee and that is why the Small Business Committee was invited to join us, in terms of any changes in the small business law. But we do have oversight and we do have legislative responsibility over ethics laws, and something is wrong with this.

Mr. SANDERS. I will be curious, Mr. Chairman, as you——

Senator LEVIN. Something is rotten there.

Mr. SANDERS. Yes. And why did not somebody in this period of time blow the whistle as sometimes happens. In our normal day-to-day operations somebody blows a whistle and we get the IG on it and we find out there is something that smells. We get nothing in this whole period of time. Nobody came to us and said, wow, these guys are really bribing everybody out there.

Senator LEVIN. Not just bribes. We are not talking about just bribes.

Mr. SANDERS. Well, that is right. But, I mean, at least that much.

Senator LEVIN. We are talking about using political clout.

Mr. SANDERS. Yes, but even worse, I think. That is bad, but worse is bribing a public official.

Senator LEVIN. Of course. Bribes, though, are covered by current law. The question is millions for political influence. It is a different issue and it is darn troubling when the money—you know, you are given $3 million for BDE. How much of that $3 million lines the pockets of consultants with political clout? So it is taxpayers' money.

Mr. Sanders, let me ask you just a few more questions here. At the time you approved this public sale of stock and allowed the company to stay in the program, did you know the following facts: one, that Wedtech had raised or expected to raise $22 million for the company and $5 million for its owners through the stock offering; were you aware of that at the time?

Mr. SANDERS. I do not recall that I was aware of the amounts.

Senator LEVIN. All right. Were you aware of this, that the stock offering enabled Wedtech to obtain a new $30 million revolving line of credit from major New York banks?

Mr. SANDERS. I do not recall that, either, specifically.

Senator LEVIN. It is a $20 million line of credit.

Mr. SANDERS. I do not recall that.

Senator LEVIN. You do not recall being aware of that fact when you approved that?

Mr. SANDERS. No, I do not.

Senator LEVIN. Were you aware of that fact at that time that Mariotta's holdings would be reduced by the public sale to 26 percent of the company stock?

Mr. SANDERS. No.

Senator LEVIN. That came later?

Mr. SANDERS. Pardon?

Senator LEVIN. That came later, that awareness? I am just trying to get the chronology.

Mr. SANDERS. I did not inject myself into the mechanisms by which we could accomplish the qualification of the minority owner.

I left that up to, obviously, counsel. It worked its way up. I had to make the policy decision about whether we should indeed let anybody in the program without disqualification. I made that policy decision. The rest of those details, I was given reassurances about the need for capital, about the need for ongoing working capital for the jobs that they had, the contracts that they had.

Those would have been the normal questions for me to ask and at the time nothing was pointed out to me about the potential failure of this mechanism to really accomplish what we had hoped to accomplish.

Senator COHEN. Were you told about the fact that Wedtech did not file notification as required by the rules?

Mr. SANDERS. I do not remember that, Senator.

Senator COHEN. You do not remember that?

Mr. SANDERS. I do not remember that. You have got to recognize that every day in the Administrator's office you are dealing with programs that involved $20 billion of other programs.

Senator COHEN. The reason I raised the question, you said you had signed off on the policy of allowing an 8(a) firm to go public.

Mr. SANDERS. Yes.

Senator COHEN. In other words, you approved that.

Mr. SANDERS. That is correct.

Senator COHEN. How did that come to your attention.

Mr. SANDERS. Because I was told that this firm was indeed planning to go public and we had to make a decision whether a firm could go public or not.

Senator COHEN. But they did not tell you the circumstances under which SBA found out about it and how it was handled?

Mr. SANDERS. No, I do not think that that—no. I do not recall that.

Senator COHEN. Some of the people felt that that was grounds for termination right there on the way in which they violated the SBA rules.

Mr. SANDERS. Well, I am sure that that is true, but of course our intent was not to find ways to disqualify this firm.

Senator COHEN. Well, you see, that is part of the problem. You said there were no red flags being raised. Somebody should have found out something. An IG should have raised questions, someone should have raised questions. Well, there were people within your bureaucracy as such at the time raising questions: Wait a minute, they didn't notify us about this.

Is not that grounds for termination?

Mr. SANDERS. Well, the failure to meet a timeframe, I consider that elevating form over substance. I am more troubled about the fact that I overlooked and we overlooked some things in reporting to me of real substance. The imbalance of debt. Those things are troublesome. If I thought a company was worthwhile and all that they had done was have a technical violation of a timeframe in submitting a letter, I sure as hell would not disqualify them for that.

I mean, if I wanted to do that, I could shut the program down.

Senator COHEN. That is a technical oversight, not notifying SBA they are going public with a public offering?

Mr. **SANDERS**. Well, within the timeframe; right? You are saying they violated the timeframe?

Senator **COHEN**. I am saying they did not give notice, period.

Mr. **SANDERS**. No, they did. Well, at some time I got notice that they were going to go public.

Senator **COHEN** Not as a result of Wedtech's efforts, you did not.

Mr. **SANDERS**. Well, all right, split hairs.

Senator **COHEN**. I am not trying to split hairs. I am just saying that obviously there were people within the staff who said, there is something wrong here, they did not give notification, there is a question here about minority ownership.

In fact, there was a series of things that were popping up but all of them were submerged or either ignored because of the overwhelming pressure or desire to get the job done. Let's have a meeting in the White House, let's bring HUD in, let's bring SBA in, let's bring the Department of Defense in, let's get White House counsel in. Get the job done and to hell with the details. Let's make it work.

That is basically what took place here, let's make it happen. And so everything else was viewed as a mere technical failure. The overriding objective was to get the work out there. As you say, let's not be too concerned about it, we were not there to discourage or to defeat the project, we wanted to make the project work.

I think that is really the dynamic that took hold within the SBA and elsewhere, even within the Department of Defense: Look, the President wants this done, let's get it done, period. And the other things took place subsequently as far as the revelations about the payoffs.

Mr. **SANDERS**. That is correct.

Senator **LEVIN**. Mr. Sanders, I believe you have told the Subcommittee staff you intended that fixed program term extensions should be granted only in the most extreme circumstances; is that correct?

Mr. **SANDERS**. Yes, I think that is a fair characterization. We wanted to be sure that extensions were not granted willy-nilly and that we were tough about them.

Senator **LEVIN**. Do you think those extreme circumstances existed here?

Mr. **SANDERS**. Well, I must think that we certainly must have at the time and I think that the entire size of this operation, all of its other involvements—again, I am looking—you know, hindsight is wonderful. I am looking back now, but at the time I am sure that we had had somewhat of the aspect of a bank that gets over its head in involvement in finance with a company. They have got to stay with them until they bail themselves out. That happens in this program and it happens in other SBA programs.

Senator **LEVIN**. Well, but was it not your policy to try to reduce the dependence of 8(a) companies on 8(a)?

Mr. **SANDERS**. As a rule.

Senator **LEVIN**. As a rule. And so you are saying that the extreme circumstance that you thought existed had to do with the fact that they had to be given help or else they would go under when as a matter of fact it was your policy that they not overrely on the 8(a) program?

Mr. SANDERS. That is correct.

Senator LEVIN. Which is it? Did you want them not to overrely on it and pull or the plug, or are you willing to just continue to extend—or were you willing at that time—to extend people's program term because they were in so deep?

You have turned it around exactly the opposite, it seems to me. Which is it?

Mr. SANDERS. I think that this was an exception to that rule in every respect. It was extraordinary in the amount of money, it was extraordinary in the size of the contract and when it came to consideration of the extension of the FPPT I am sure that they made a great case for going on and extending it, because we could not cut them off at that time where they would fail.

Senator LEVIN. Did you agree with your deputy that it was unwise to offer the $3 million BDE grant?

Mr. SANDERS. Well, that was not the recommendation I got. The recommendation I received was to grant the $3 million BDE.

Senator LEVIN. Did you know that he felt it was unwise to do this?

Mr. SANDERS. Well, I do not recall that he did. That was not the way it was recommended. That was not the recommendation I got. If he felt that strongly, he should have recommended against it.

Senator LEVIN. What you are saying is that he did not express any concern about the size of that BDE grant to you and he did not express to you that it was unwise to do that and that the only reason that he was recommending it to you was the White House interest? He never said that to you?

Mr. SANDERS. No. But I am sure he expressed concern about the size. I was concerned about the size. I was concerned about the whole contract.

Senator LEVIN. My question is, did he ever express to you that the only reason he was recommending it was because of the White House interest in this matter?

Mr. SANDERS. No. He did not express it to me that way.

Senator LEVIN. And if he had?

Mr. SANDERS. If he had? I was already aware that the White House wanted this thing.

Senator LEVIN. But if he had told you, I do not think we ought to go ahead with this because it is really unwise and the only reason that I am going to recommend that we do it is because of White House pressure or interest, what would your reaction have been; do you know?

Mr. SANDERS. If he had gone further and said, listen, I think that this thing will fail——

Senator LEVIN. No. Just the way I phrased it, that it is only White House interest in this matter that is causing me to tell you to give these folks $3 million; we have never gone over $100,000; we have put in writing that giving a multimillion dollar BDE grant would raise questions about our administrative capability. If he had told you that and he says, but look, you are the administrator, I am going to recommend this to you to go along with this because of the White House expression of interest in this, what would your reaction have been?

Mr. SANDERS. My reaction would have been, well, look, regardless of the White House recommendation, do you think these people can make it with this kind of money, and if they can, we will, and if they cannot, we will not go for it.

There have been larger awards, incidentally, of advance payments than this.

Senator LEVIN. I am talking about BDE grants. There has never been one larger, has there?

Mr. SANDERS. I think maybe there has.

Senator LEVIN. That was half of your total grants that year.

Mr. SANDERS. That year, but I am talking about historically.

Senator LEVIN. There has never been anything close to this. There has never been a million dollar BDE grant.

Mr. SANDERS. Hold on a minute.

Mr. WEBBER. I think there were some larger BDE grants in the New York office.

Senator LEVIN. No. The New York people testified yesterday. There had never been a BDE grant in the millions, ever.

Mr. SANDERS. Well, I doubt that.

Senator LEVIN. Pardon?

Mr. SANDERS. I doubt that, Senator, but we can check it out on the record. But your point is well taken regardless of that.

We had some lawsuits against some 8(a) contractors in multimillion dollars in history. I mean, going back 10 years or more there have been some big bloopers in the past.

Senator LEVIN. Let me now move to the pontoon contract. You played a role in the award of the $134 million Navy pontoon contract; is that correct?

Mr. SANDERS. Yes.

Senator LEVIN. Was that the largest 8(a) contract ever awarded?

Mr. SANDERS. I do not know.

Senator LEVIN. All right. I will tell you that it is our information that it was, but in any event, we will go on. Is it true that you told the Subcommittee staff that you personally appealed the Navy's decision not to set aside this contract for the 8(a) program?

Mr. SANDERS. I think that I had written a letter to the Secretary of the Navy requesting that this be an 8(a) activity.

Senator LEVIN. That was an appeal to him after he decided not to do so?

Mr. SANDERS. After he had decided not to do so?

Senator LEVIN. Yes.

Mr. SANDERS. I think that is the way it was. I am not sure.

Senator LEVIN. All right. Did you also personally lobby Navy Assistant Secretary Everett Pyatt to set aside this contract?

Mr. SANDERS. Lobby? Did you say lobby?

Senator LEVIN. I used the word "lobby," yes.

Mr. SANDERS. I think Secretary Pyatt and I had a meeting about the merits of this thing on several occasions.

Senator LEVIN. Did you urge him to set aside this contract?

Mr. SANDERS. Yes. I feel that was my job, either to abandon it all together or be an advocate for SBA's programs.

Senator LEVIN. So that you personally met with him on at least one and perhaps more occasions and urged him to set aside the pontoon contract; is that correct?

Mr. SANDERS. That is correct.

Senator LEVIN. Did you personally approve the selection of Wedtech as SBA's candidate for that contract?

Mr. SANDERS. I finally approved of the contract, but let me also state, as I said before, sir, I had hoped and I think Secretary Pyatt agreed at the outset that we would have four firms performing this contract on the different coasts. We hoped to have one on the east and west and the gulf coast and perhaps a fourth one in the Great Lakes.

Senator LEVIN. Did you approve this finally going to one firm?

Mr. SANDERS. Well, that was the only firm that was left. I was disappointed that we were not able to qualify other firms. We tried very hard to qualify other firms and they fell by the wayside for one reason or another.

Senator LEVIN. Were there occasions when you personally urged and met with assistant secretaries such as Mr. Pyatt for the set-aside of a specific contract when you were at the SBA?

Mr. SANDERS. I do not recall that, no. I had nothing to do with the negotiations of the contracts between SBA and the Navy or Army.

Senator LEVIN. I am talking about the set-aside.

Mr. SANDERS. What?

Senator LEVIN. I am talking about, were there other occasions in which you personally met with the head of an agency or an assistant secretary, such as Mr. Pyatt, urging the set-aside of a specific contract?

Mr. SANDERS. I do not recall that. I was dealing in the general sense of the whole Sea Lift program. I do not recall how many contracts that amounts to so I do not know. I do not recall.

Senator LEVIN. Let me go backwards. You met with Mr. Pyatt on one or two occasions relative to that set aside?

Mr. SANDERS. Yes.

Senator LEVIN. My question is, did you ever meet with either agency heads or assistant secretaries such as Mr. Pyatt on other set asides?

Mr. SANDERS. I do not recall.

Senator LEVIN. Is it accurate to say that that was not a common occurrence, that you would personally meet with heads of agencies or assistant secretaries urging set-aside?

Mr. SANDERS. That is correct. It was not an ordinary thing.

Senator LEVIN. Now, is it true that Pyatt initially resisted the set-aside of the contract? For whatever reason, is it true that he resisted the set-aside?

Mr. SANDERS. It seems to me that Pyatt started out by being negative about the contract and I cannot recall whether it was both the Sea Sheds and the pontoons or just the pontoons.

Senator COHEN. Well, first of all, let me interject here that the Defense Department finds itself in a bind by virtue of Senator Levin and my participation on the Armed Services Committee because we have been urging competition on Defense contracts and the more the better. And the Navy was then in a position where they wanted more competition and not sole-source contracts, because Senator Levin and I do not like sole-source contracts as a general rule.

We understand that there is a conflict here. SBA has a set-aside program which we basically support, and yet that puts the Navy and other Defense agencies in a difficult position.

Mr. SANDERS. I understand.

Senator COHEN. They do not want sole-source and the point to us by saying, this is bad for the system. So that is probably why Mr. Pyatt—and I will not speak for him, we will perhaps hear from him later——

Mr. SANDERS. If I had his job, I would probably look at it the same way.

Senator LEVIN. In February of 1984 you attended a meeting between the SBA officials and officials of Wedtech and Medley Industries—they were the prospective contractors for the pontoon contract—to discuss the distribution of performance between those two contracts, and we have got minutes of that meeting from the Wedtech files which will be made part of the record.[1]

According to these minutes, Bob Luhlier, your chief of staff, kicked off the meeting by stating the following: "The purpose of the meeting is to discuss the technical and distribution aspects of the project. A lot of political blood has been shed."

Can you tell us what Luhlier may have meant when he said, a lot of political blood has been shed?

Mr. SANDERS. Well, you know, I cannot say what was on Luhlier's mind when he made that statement. I do vaguely recall that we had a meeting with these two 8(a) firms because we felt that there should be some kind of relationship between them, hoping that we could get—I think it was the Medley firm, was it not?

Senator LEVIN. Do you remember him saying that?

Mr. SANDERS. No.

Senator LEVIN. Do you know what he would have meant if I tell you he did say that?

Mr. SANDERS. No, I do not know what he meant.

Senator LEVIN. Going back to a question——

Mr. SANDERS. But may I add something to that? I do recall that there was a lot of gnashing going on between Medley and Wedtech, which was not unusual. These 8(a) firms used to chew each other up to try and get a contract and they would cast dispersions on one another. They would try fighting for a contract in front of us.

Senator LEVIN. That is what you understood that he meant by political blood?

Mr. SANDERS. Well, that does not mean anything to me. I do not know what he meant, unless he meant that, that these guys have got to quit cutting each other up.

Senator LEVIN. When it came down to just Wedtech and they were the last one left and you said that you were disappointed by that. Were you concerned that any 8(a) company should get a contract that large? Did that concern you, when it just came down to Wedtech?

Mr. SANDERS. That amount of contract was over how many years? Do you recall?

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[1] See p. 373.

Senator **Levin**. It was $100 million contract. We are talking about a firm that is supposed to be economically disadvantaged. My question is, did it concern you that any one 8(a) firm was getting a $100 million contract? That is my question.

Mr. **Sanders**. Yes.

Senator **Levin**. How did that get implemented, your concern?

Mr. **Sanders**. Because I had hoped that that contract would be split up.

Senator **Levin**. But it was not.

Mr. **Sanders**. And it was not.

Senator **Levin**. When it was not split up, you still approved it and now I want to know, if you were so concerned about it, why did you approve it?

Mr. **Sanders**. Because I felt that this was something, again, that would establish that an 8(a) firm could do this level of work, and I was assured that they have the technical capacity and the location to do it.

Senator **Levin**. Back to Pyatt, if I can for a minute, because I was not sure I understood your answer. You urged him on a couple of occasions to set aside the contract and he finally changed his mind and did agree to do that; is that correct?

Mr. **Sanders**. That is as I recall.

Senator **Levin**. Did he tell you why he changed his mind?

Mr. **Sanders**. No.

Senator **Levin**. Pardon?

Mr. **Sanders**. No.

Senator **Levin**. So you do not know what his reasons were?

Mr. **Sanders**. No.

Senator **Levin**. Do you recall discussing the issue of your SBA candidate for this pontoon job with Irene Castillo, the SBA regional administrator in San Francisco?

Mr. **Sanders**. Yes.

Senator **Levin**. Did you tell her that her candidate, Lee Engineering, would receive a portion of the contract?

Mr. **Sanders**. No.

Senator **Levin**. You say you did not tell her that?

Mr. **Sanders**. I did not tell her that, no. She had a candidate—Lee Engineering—that was going to use a Puerto Rican affiliate, if I recall right. I was hopeful that they could come off with something. Each one of my regional administrators in about four regions had what they hoped were candidates to get some of the pontoon projects. There was one in Texas, there were two or three on the east coast, and this one on the west coast. If not, there was another one, I think, that was trying on the west coast.

But they all fell by the wayside when they finally came down to analyzing whether they had the capacity and the expertise to do it.

Senator **Levin**. My question though is, do you recall telling Ms. Castillo that Lee Engineering would receive a portion of this contract? That is my question.

Mr. **Sanders**. Of course not.

Senator **Levin**. Do you recall meeting with Peter Neglia, the SBA regional administrator in New York and with Bob Turnbull of your staff to discuss whether the contract should go to Wedtech? Do you remember that meeting?

Mr. **Sanders**. No, I do not.

Senator **Levin**. We looked at both the central office files as well as the New York regional and the district office files and we have been unable to find a single document which explains or justifies the SBA decision to select Wedtech for the pontoon contract. Can you explain why there was never a memorandum or other document which explains or justifies the decision to give that contract ultimately to Wedtech alone?

Mr. **Sanders**. I sure as hell cannot.

Senator **Levin**. Would that be in accordance with SBA's usual procedures?

Mr. **Sanders**. Yes, it would, to have a file on that subject.

Senator **Levin**. In other words, the usual procedure was that there would be a written memorandum; is that correct?

Mr. **Sanders**. Of course.

Senator **Levin**. So the failure to have such a memorandum would not be in accordance with SBA's usual procedures; is that right?

Mr. **Sanders**. That is correct.

Senator **Levin**. Now, assume with me for a moment that this was the largest 8(a) contract ever awarded, or that it surely was a very large one; you would concede that. Were you concerned that it was Wedtech, which already had the Army engine contract and had already received the largest, or a very large BDE grant, that was getting this contract? Did that concern you?

Mr. **Sanders**. Sure it concerned me.

Senator **Levin**. Now, as I understand it, you attended a meeting on January 25, 1984, with the Navy at which Wedtech was presented as the SBA candidate on the pontoon contract. At the time of that meeting Wedtech already had a $27 million Army engine contract; it had already received $80 million in 8(a) contracts; it had raised millions of dollars by selling stock to the public and its owners were multimillionaires; minority ownership of the company was predicated on a so-called sale of stock in which no money changed hands; its 8(a) term had expired and it needed an extension in order to get the pontoon contract; it was almost exclusively dependent on 8(a) contracts; 95 percent of its contracts were 8(a) contract orders.

Now, Mr. Rogers, who is the SBA deputy administrator in New York, testified that the SBA should have been making every effort to wean Wedtech off 8(a) contracts at that time. Tell us once more, given all that background, how it is you approved the selection of Wedtech for the single largest contract? Wedtech alone. It was your desire that there be more than one contractor; that did not happen. So you have got to add that into the pot.

You put all of this there and you approve them alone for the single largest 8(a) contract when you were trying to wean contractors off 8(a), and given all of those other circumstances.

Just again, tell us why it is you approved that?

Mr. **Sanders**. From the beautiful, comfortable point of view of September 1987 that is a ridiculous judgment, is it not, because these guys stole and plundered that company.

Senator **Levin**. I did not talk about stealing and plundering. I just gave you the facts that you knew.

Mr. SANDERS. I do not know that I knew all of those facts. For instance, I do not think I knew anything about the mechanism of transfer of ownership of the stock. I assumed and relied upon the judgment of my counsels, I relied on the judgment of the 8(a) associate administrator for minority small business, on the regional administrators, on the financial information that I was given. I relied on that.

Senator COHEN. Did you know that the term had expired?

Mr. SANDERS. I do not remember that the term expired, Senator. But I did, indeed, rely on a lot of advice, and I think even those who advised me had been deceived.

Senator COHEN. In what way?

Mr. SANDERS. Well, I think there was obviously a coverup of the true condition of this company, of its performance on the contracts. How did they get through the SEC? How did they escape some detection when the Army and the Navy audited those contracts? How did this happen over and over again at each juncture these guys got through without detection? I do not know. I am curious to find that out.

Senator COHEN. What do you suspect took place as to how that could possibly have happened?

Mr. SANDERS. I suspect there was a number of people who were paid off to cover up information, disguise it, distort it.

Senator LEVIN. We will be getting into the Army and Navy resistance that was overcome at our next hearing. According to Templeman, your deputy, the Army never would have approved this but for White House intervention. According to other testimony we will have, the Navy objected to this set-aside. And so there were some serious objections which were raised and they were overcome.

Mr. SANDERS. Yes. I will tell you this much, too, Mr. Chairman, in most of those kinds of contracts with the Army and Navy, it is not unusual to run into resistance from their side. Our job is to uphold the laws in the Small Business Act and to be advocates for this program, and I want to tell you that it made me very uncomfortable from time to time to advocate some of these kinds of contracts.

My background was in surety bonding also, in contracting, and none of these firms would ever have had a surety bond for performance based on their background and their financial condition. But that is what the program is all about. It is to help people that are not up to snuff, that have a disadvantage. When you talk about the fact that these people have acquired this enormous wealth by being in the program, I agree with you. That is a problem we should address.

But if a person starts out with a net worth of say $100,000 and they are going to go into some kind of a small manufacturing firm or something, that is economic disadvantage for the purposes of that business. Now, when they acquire, and they go on successfully and they are ready to graduate, or they are two years from graduation and suddenly their net worth now is $4 million and they are doing very well, should you throw them out of the program because they are no longer economically disadvantaged? That is a policy decision. I think not. If it is $20 million, you probably should.

Senator **Levin**. Well, let me tell you what they said in their prospectus when they sold this stock to the public. They said: "Upon completion of this offering the company may no longer be eligible to participate in the Section 8(a) program. In the event of termination of its eligibility to participate in the 8(a) program, the company would be required to compete for Government contracts on the same basis as other companies."

Were you aware of that representation in their prospectus?

Mr. **Sanders**. No. I never read their prospectus.

Senator **Levin**. One last question. We have had testimony about the political connections from a number of witnesses here, including Mr. Templeman. They said political connections are what overcame the resistance of the Army. We have talked to the former New York district director, Mr. Tishelman, who says they were obviously politically well-connected. Mr. Elbaum has stated that they were clearly politically well-connected by the access that they had to everybody.

The business development specialist in New York, Mr. Murtagh, told us that they had strong political connections; anything they wanted, they got. Everyone was scared. Everyone knew there was pressure. The contracts officer, Mr. Zilg, told us that one would have to be thick not to see that Wedtech was a favorite child. Nobody was unaware of this special status. People were afraid that the company would be found ineligible.

All of that happened while you were the administrator. Are you troubled by those kinds of statements and feelings and beliefs on the part of people who are in SBA? Should that be rooted out? Should we find a way to try to reduce the role of this kind of political influence so that people who work under you do not feel they are afraid to find a company ineligible?

Mr. **Sanders**. I am not only disturbed, I am dammed mad that this ever happened because I think that those of the veterans in this organization will tell you, and observers of the SBA, that with this single exception, the SBA was probably cleaner of scandal in any 4-year period in its history. And the word was out, I think very clearly from me, that nobody had to knuckle under to any kind of political pressure, that there would be no fix in, and yes, I am damn mad that some people in the administration of this agency felt intimidated by anyone, whether it be those politicians in the Bronx, Congressmen or members of this Administration in the White House.

Senator **Levin**. Does it bother you that your own deputy, starting right smack at the top, your own deputy felt it was unwise to start with that $3 million BDE grant but recommended it anyway; does that bother you?

Mr. **Sanders**. He recommended it. I do not know that he felt that strongly about it.

Senator **Levin**. I am telling now, he has testified under oath that he felt it was unwise and a mistake.

Mr. **Sanders**. He did not make that recommendation to me.

Senator **Levin**. I know. Does it bother you?

Mr. **Sanders**. Of course it bothers me.

Senator **Levin**. We are starting right at the top.

Mr. SANDERS. The whole thing bothers me. I think it is a disgrace, and to think that they have so abused the privilege of being in this program makes the whole program somewhat suspect. Yes, I am mad.

Senator LEVIN. Do you feel that you were taken advantage of in anyway?

Mr. SANDERS. Well, of course.

Senator LEVIN. By whom?

Mr. SANDERS. I think I was given misinformation. I believe information was withheld. I think we got some bad advice, and when you head up an agency of 100 offices, 5,000 employees and all of these programs, you have to rely on people underneath you to give you good advice. You cannot do all the work yourself.

I say again, this single exception, I am afraid you will never write regulations to prevent people from stealing the treasury from you.

Senator LEVIN. Well, it is much deeper, again, than the stealing. We have laws about stealing. It is the political influence that is the big issue here, because without the exertion of that influence you would not have even gotten to this point. You need that first, and again, you have got a situation where a good intention about jobs has turned into a feeding trough for people who have political clout. And that is what we have got to get the handle on here.

Mr. SANDERS. I hope you can write some laws to prevent it.

Senator LEVIN. I hope so.

Mr. Sanders, your counsel, thank you.

Mr. SANDERS. Thank you, Mr. Chairman, Senator.

Senator LEVIN. We will resume these hearings on the 29th of September.

[Whereupon, at 1:05 p.m., the Subcommittee adjourned to reconvene subject to the call of the Chair.]

APPENDIX

STATEMENT OF
MARTIN R. POLLNER, COUNSEL
TO WEDTECH CORPORATION
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT
GOVERNMENTAL AFFAIRS COMMITTEE
UNITED STATES SENATE

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Mr. Chairman and Members of the Subcommittee:

I am honored to be invited by the Chairman to testify before this Committee. I hope that my testimony of the events involved in the rise and fall of Wedtech will assist the Committee's work. Remedial measures, either legislative or administrative, would be a positive achievement in an otherwise dismal saga of greed and corruption uncovered by the media and exposed through investigations by federal and state prosecutorial and law enforcement agencies.

Our law firm, Pollner, Mezan, Stolzberg, Berger & Glass, P.C., has served as counsel to the new management of Wedtech in the pending bankruptcy proceeding, has cooperated with and assisted the federal and state criminal investigations and has conducted its own investigations in an effort to recoup the funds stolen from the company.

During these last nine months as general counsel to Wedtech, it has become clear that the victims of the blatant corruption perpetrated by Wedtech's former management and those involved with them in the public and private sectors were numerous and varied and the wrongdoing unprecedented in scope and undetected by established controls. Not only did the American taxpayer, the federal government, the purchasers of Wedtech securities and the company's creditors suffer substantial financial injury from the illegal practices, but perhaps the most unfortunate victims of all were the hundreds of employees in the South Bronx who had their dreams shattered. Those minority employees had been led to believe they were fulfilling the American dream, and that their futures were ripe with opportunity. Instead, they became victims of the greed and callousness that permeated former management and those in government and the private sector who were their accomplices.

Mr. Chairman, as you are aware, my firm has extensively cooperated with the staff of this Committee to the fullest extent possible, and we will continue to do so. With regard to my public testimony, however, because of the sensitive nature of continuing criminal investigations and the pendency of civil litigations and criminal trials, we have discussed with your staff and your counsel certain limitations upon my testimony in public session. These are intended to avoid interference with on-going investigations by the FBI, the IRS, the various U.S. Attorneys and the Independent Counsel's Office and to assure that there is no infringement upon the rights to a fair trial of the defendants already accused in these pending cases. In these areas I will, to a large extent, be constrained to limit my testimony to information made public in Wedtech-related criminal indictments, pleas of guilt, and the civil complaints brought by new management.

On December 11, 1986, only days before Wedtech filed its

Chapter 11 bankruptcy proceeding in the United States Bankruptcy Court, our firm became its general counsel, replacing the law firm which had represented the Company for several years as outside general counsel. The bankruptcy proceeding is now pending before Judge Howard C. Buschman, III in the Southern District of New York.

Prior to late 1986, the perception of Wedtech as an American success story was well-known. In brief, Wedtech was formed in 1965 when John Mariotta, a New York born son of Puerto Rican parents, reportedly invested $3,000 to start a small manufacturing company, then called Welbilt, in a renovated brick garage in the South Bronx. In 1970, Mariotta was joined by Fred Neuberger, a Rumanian refugee with a knowledge of sheet metal fabrication. In 1975, based on Mariotta's Hispanic background, the company became eligible under the Section 8(a) program to receive government contracts through the Small Business Administration without the need for competitive bidding. There followed approximately $496,000,000 in federal defense contracts. Indeed, the company publicly reported profits for 1985 of over $9.6 million and reported even better results for the first six months of 1986.

The picture had changed dramatically when we began our representation in December 1986. It was a tumultuous period, marked by major federal and state criminal investigations with daily press coverage alleging massive fraud by the then-current senior management and inside directors. We found a looted treasury; the layoff of almost the entire work force and the cessation of operations; the recent resignations of Wedtech's outside independent auditors and corporate counsel and their refusal to turn over all necessary books, records and thousands of documents. We were also faced with the understandable threat of Wedtech's major customer, the Department of Defense, to terminate all existing contracts and its refusal to award new contracts.

As new attorneys for Wedtech, our goals were to weed out corrupt management; to bring back the work force and resume operations; to restore relations with the Defense Department in order to prevent the loss of existing contracts and to recover the millions of dollars of looted assets. We have or are in the process of accomplishing many of these goals --- but, sadly, although we helped return approximately 300 employees for eight months they too had to be laid off in August, 1987.

We began by counseling Wedtech's former management that if the government investigations were to confirm the newspaper reports of alleged wrongdoing on their part, then they must resign in the best interests of the company. Their resignations followed. We quickly obtained major changes in the Board of Directors, including the resignation of all of the inside directors: Fred Neuberger, Mario Moreno, Anthony Guariglia and Lawrence Shorten. Subsequently we urged and obtained the resignation of two outside directors, W. Franklyn Chinn and Bernard Ehrlich.

Working with a newly constituted Board of Directors, we recruited honest managers; retained a new outside independent accounting firm and successfully obtained by Court orders essential documents refused us by the former auditors and general counsel. An intensive effort began to salvage the company, to determine the damage done to Wedtech and to uncover the level of wrongdoing that had occurred. An overriding question haunted us --- how a company closely scrutinized by huge multi-national accounting firms, monitored by on-site Defense Department auditors, and advised by prominent consultants and attorneys, could continue for so long in its criminality and deception.

As soon as we began to investigate the company's finances, we learned that its financial condition was dramatically different than the company's public disclosures. It appeared that the company had probably been insolvent for years; most of its prior government contracts were not profitable; and it was subsisting on money improperly obtained from public offerings of Wedtech securities and progress payments received from the Department of Defense. Members of its former management had been misappropriating millions of dollars from the company for their personal benefit for years as well as creating a slush fund, used and available for the admitted bribery of city, state and federal officials.

Wedtech's new management deserves praise for its response to this unprecedented situation. It immediately instituted a policy of total cooperation with all federal and state law enforcement agencies and established harmonious relations with the many prosecutors and investigators. (I have appended letters from the U.S. Attorneys for the Southern District of New York and the District of Maryland as well as a letter from the Independent Counsel as Appendix 1.)

An intensive effort began to recover Wedtech's assets and, in that regard, our firm instituted, on behalf of Wedtech, a series of lawsuits against the corrupt former managers, various consultants who were paid for services which we allege they never rendered and construction contractors who grossly inflated their invoices and kicked back monies to former management. Actions were also commenced against the company's outside independent auditing firms alleging malpractice against Touche Ross and malpractice and aiding and abetting a fraud against KMG Main Hurdman.

The amounts of money involved in this case are staggering. $162,000,000 was raised from public offerings. (A summary of the public securities offerings by Wedtech is set forth in Appendix 2.) Defense Department contracts obtained under 8(a) generated revenues of approximately $250,000,000 on total contracts valued at $496,000,000.

After receiving a $32 million Army small engine contract in September, 1982 under the 8(a) program, the company went public in August, 1983. It was subsequently awarded by the SBA Navy Pontoon contracts in excess of $135 million dollars. It now appears from various federal indictments that those contracts may have been obtained at least in part from bribery of federal and state officials. It further appears from these indictments that Wedtech's continued qualification as a company run by disadvantaged members of minority groups under the 8(a) program was only maintained as a result of a fraudulent scheme involving an alleged sham stock purchase agreement.

The offerings of securities to the public were characterized from the very beginning by material distortions of the financial conditions of the company. More than one half of the $162,000,000 raised from the general public was raised in 1986, long after the time the company became insolvent. It is noteworthy that the original 1983 stock offering failed to disclose the $4.7 million dollar progress payment fraud against the Defense Department even though the fraud was known by the company's outside auditors.

During the period that Wedtech was raising funds from the public and receiving funds from the Department of Defense, former management was cashing in to an astonishing extent. Three members of former management, Mariotta, Moreno and Neuberger, received $6.0 million on the sale of their stock in the initial public offering and thereafter received an additional $16.4 million on further sales of their stock through 1986. Throughout this period, in fact, former management as well as other insiders and consultants were selling their stock to the public, receiving more than $24 million in the aggregate. A large portion of those sales took place in 1986 - the year of Wedtech's collapse. (As further requested by this Committee, Appendix 3 shows the sales of Wedtech stock by former management, political consultants and certain others during the period Wedtech was making its securities offerings to the public.)

As requested by this Committee, a schedule of Wedtech shares of stock and stock options issued or granted to former Wedtech management, consultants and certain professionals is set forth in Appendix 4. One of the indictments brought by Rudolph Giuliani, the U.S. Attorney for the Southern District of New York, alleges that Wedtech stock and stock options were issued to certain individuals and third parties as part of bribery and extortion schemes.

Wedtech's numerous political consultants/advisors fared very well indeed. Lyn Nofziger, Mark Bragg and E. Robert Wallach received an aggregate of 135,000 shares of Wedtech stock plus

187,500 in stock options. They sold those shares in 1985 and 1986, receiving in the aggregate almost $1.3 million on the sales. (See Appendices 3 and 4.)

Monies also flowed freely out of Wedtech in cash. (At your request, a schedule of payments from Wedtech to its former executives, lobbyists and consultants is provided in Appendix 5.) In addition to the cash payments totalling more than $8.8 million to former management during the period from 1982 through 1986, the indictment brought by the U.S. Attorney for the Southern District has charged that approximately $5.5 million was stolen from Wedtech by former management through a kickback scheme involving related contractors.

In addition to receiving stock, consultants/advisors W. Franklin Chinn, R. Kent London, E. Robert Wallach, Lyn Nofziger and James Jenkins received aggregate direct payments totalling more than $2.4 million.

The indictments arising out of Wedtech to date have been far-reaching and in all likelihood, in my opinion, others will follow. (A summary of indictments and criminal informations brought by various prosecutorial offices against persons formerly associated with Wedtech is set forth in Appendix 6.) Among those indicted are a U.S. Congressman, a former SBA Regional Administrator, a former Presidential aide, a Postal Service official, a former General in the New York National Guard, and members of former Wedtech management.

At your request, a list of civil lawsuits brought by our firm on behalf of Wedtech to recover stolen or improperly obtained monies and to hold responsible those who permitted this to happen is contained in Appendix 7. In addition to commencing actions against the company's corrupt management and its outside independent auditors for malpractice, Wedtech has sued consultant/advisors E. Robert Wallach, W. Franklyn Chinn and R. Kent London for receiving substantial sums of money for services that Wedtech alleges were never rendered.

A paramount issue, which I know is of great concern to this Committee, is how this web of corruption and criminality went so far without being detected. The question requires both a review of the systems of detection and control, public and private, and an examination of the nature of the misconduct. Part of the problem clearly involved the outright bribery of public officials, and those who were compromised by political pressures, the prospects and realization of huge sums of money and profits from their dealings with Wedtech.

The problem also involved other more complex elements. The bribery was clearly not confined to the public sector. We know that Wedtech's former chief executive officer, Fred Neuberger, has confessed in his guilty plea to bribing the engagement partner of Wedtech's former auditors, KMG Main Hurdman, with more than $1 million in benefits. We know that certain members of the audit group of KMG Main Hurdman left that company at a time when serious questions had already been raised about Wedtech's business practices under 8(a) and joined Wedtech as executives with lucrative arrangements.

Beyond this, however, there are questions of negligence which we have raised in our civil actions against the company's prior auditors, KMG Main Hurdman and Touche Ross, and questions which also exist with respect to the role of some of the former legal advisors to Wedtech. Both auditors issued clean opinions on financial statements that totally failed to disclose the company's insolvency. Similarly, of course, the same questions are raised as to the manner in which the SBA and the military agencies supervised and audited Wedtech's participation in the 8(a) program including Wedtech's qualifications for the program as well as the payments made under it.

From our examination, it is clear that there were significant red flags which should have initiated inquiries which would have led to the discovery of the corruption and improprieties. Those who would normally be expected to detect such massive wrongdoing - both in the public and private sectors - did not do so. The question raised is why did the system fail.

The answer requires an examination of the adequacy of federal agency controls and supervision of companies under the 8(a) program, the adequacy and policing of the lobbying and conflict of interest statutes as well as controls within the private sector particularly by the auditors and counsel for the company.

I do not hold myself out as an expert on the 8(a) program, but, based on my experience with Wedtech, I believe that the SBA must tighten its procedures and become less political. The 8(a) program, in my opinion, is most worthy of continuation in that disadvantaged minorities deserve assistance in taking their rightful place in our free enterprise system. However, in order to assist our citizens and the government, the program must function properly, free of undue political influence and with adequate safeguards and controls.

I also respectfully suggest that a tightening up of the lobbying and conflict of interest statutes is necessary. Large amounts of money were expended for political consultants who had recently left high government positions or who claimed access to those officials. Questions of the legality as well as the ethics of their activities are the subjects of current investigations, but I would urge even longer limitations on government employees being able to work for companies they regulated or lobbying those with whom they worked.

Of one thing we are certain: very little of these millions of dollars found their way to Wedtech's 1,000 minority employees from the economically deprived South Bronx area. These people were led to believe in Wedtech and the promise of training and employment to those citizens who needed it the most. These men and women and the communities in which they live are the most seriously affected victims of the ravaging of Wedtech.

I would be pleased to respond to any questions you may have, keeping in mind that my firm did not represent Wedtech when these events took place and that our internal investigation focused on the civil liability of those whose negligence or greed caused the diversion of assets from Wedtech. We did not inquire into lobbying tactics or the alleged abuses of political influence.

Thank you again for providing me with this opportunity to share with you some observations regarding the Wedtech misfortune. I hope this Committee's hearing on proposed remedial legislation will provide at least one worthwhile chapter in the Wedtech saga.

Mr. Chairman, this concludes my statement.

APPENDIX 1

OFFICE OF INDEPENDENT COUNSEL
1111 EIGHTEENTH STREET, N. W.
SUITE 500
WASHINGTON, D. C. 20036
(202) 786-6326

September 2, 1987

Federal Express

Martin Pollner, Esquire
Pollner, Mezan, Stolzberg, et al.
360 Lexington Avenue, 14th Floor
New York, New York 10017

Dear Mr. Pollner:

This is to express my deep appreciation for the time and capable assistance you and your staff have given to the Office of Independent Counsel in connection with our efforts to fully investigate all questions concerning the relationship of Attorney General Edwin Meese to the Wedtech Corporation and persons associated with the Wedtech Corporation.

My Associate Counsel Carol Bruce advises me that you have given generously of your time in meetings with her and our agents and that you have made your staff available to Ms. Bruce and the agents to assist in locating relevant documents from the remaining files of the Wedtech Corporation. We have also benefited greatly from your perspectives and suggestions in ferreting out the various personal, professional and financial relationships between key individuals in this important inquiry.

Thank you again for your assistance.

Sincerely,

James C. McKay
Independent Counsel

CEB:ern

P

RKB:jsw
PC-84/1

United States Attorney
Southern District of New York

One Saint Andrew's Plaza
New York, New York 10007

June 1, 1987

Martin Pollner, Esq.
Pollner, Mezan, Stolzberg, Berger & Glass, P.C.
360 Lexington Avenue
New York, New York 10017

Dear Mr. Pollner:

You have requested a letter from this Office setting forth the facts relating to the cooperation provided by you to the United States Attorney's Office for the Southern District of New York.

This letter is to confirm that the law firm of Pollner, Mezan, Stolzberg, Berger & Glass, P.C. has provided prompt, extensive assistance to the United States Attorney's Office for the Southern District of New York in its continuing investigation of alleged criminal conduct by certain public officials and former officers and employees of the Wedtech Corporation.

I understand that you and John Lang, Esq. of your firm first had contact with members of my staff in December 1986. From the outset, you pledged the complete cooperation of your firm and the new management of Wedtech in the criminal investigation. Your firm has lived up to that pledge fully, responding quickly to our repeated requests for documents and other information. Many of these requests have been burdensome, yet your compliance has been both timely and courteous. Moreover, upon your advice, new management has been willing to facilitate the investigation. This has greatly assisted our ability to obtain documents and testimony. I further understand that your firm was particularly sensitive to potential and/or actual conflicts of interest ensuing from joint representation of various Wedtech officers and directors.

RKB:jsw
PC-84/1

You may inform the Court that your efforts, and those of new management, to cleanse the corporation and to assist our investigation, were important considerations in our decision not to seek the indictment of Wedtech itself. Similarly, you may inform the Court that because of your efforts and those of new management, when the opportunity presents itself, we are suggesting to Executive Branch agencies that before they make decisions based on the actions of Wedtech's former management, that they evaluate whether new management's programs and controls should be factored into the agencies' ultimate decisions.

Very truly yours,

Rudolph W. Giuliani

RUDOLPH W. GIULIANI
UNITED STATES ATTORNEY FOR THE
SOUTHERN DISTRICT OF NEW YORK

United States Attorney
District of Maryland

United States Courthouse, Eighth Floor
101 West Lombard Street
Baltimore, Maryland 21201-2692

301/539-2940
FTS/922-4822

GPJ:CWG
LTR0424

April 24, 1987

EXPRESS MAIL

TO WHOM IT MAY CONCERN:

This letter is to certify that the law firm of Pollner, Mezan, Stolzberg, Berger & Glass, P.C. has provided prompt, extensive assistance to the United States Attorney's Office for the District of Maryland in its continuing investigation and prosecution of criminal conduct by certain public officials and former officers and employees of the Wedtech Corporation. I first met John Lang, Esquire, of that firm in New York on January 14, 1987 at which time Mr. Lang pledged the complete cooperation of his firm and of the new management of Wedtech. Mr. Lang and his firm have lived up to that pledge fully, responding immediately to our repeated requests for documents and other information. It has been particularly gratifying to this office and to the Federal Bureau of Investigation that the cooperation we have received with each request has been immediate and without any complaint regarding the scope of the request or the logistical burden involved in gathering and transmitting the information.

Sincerely,

Breckinridge L. Willcox
United States Attorney

By
Gary P. Jordan
First Assistant U.S. Attorney

APPENDIX 2

DESCRIPTION OF WEDTECH CORP. SECURITIES OFFERINGS

1983 Initial Public Offering - Common Stock

On August 25, 1983 Wedtech Corp. issued through an initial public offering 1,900,000 shares of its common stock, raising $30,400,000. That offering was comprised of 1,500,000 Shares sold for the account of Wedtech and 400,000 Shares sold for the account of John Mariotta, Fred Neuberger and Mario Moreno. The net proceeds were $22,260,000 to Wedtech after underwriting discounts and commissions, and $5,936,000 to the selling shareholders. The prospectus states that the purpose of the offering was to raise funds for (i) the repayment of all indebtedness to, or guaranteed by, the Economic Development Administration of the U.S. Department of Commerce, as well as the repayment of certain loans to the Corporation by its three principal shareholders and certain banks; (ii) the development of the Corporation's coating business through the expansion of plant capacity, the acquisition of machinery and equipment, and research and development; and (iii) working capital for marketing and sales programs, payment of past-due accounts to vendors, and general corporate purposes.

1984 Debenture Offering

On June 22, 1984 Wedtech issued through a public offering $40,000,000 of 13% Convertible Subordinated Debentures due June 15, 2004. The net proceeds to Wedtech, after underwriting discounts and commissions, were $38,800,000. The prospectus states that the purpose of the offering was to raise funds for (i) the repayment of certain existing short-term bank debt; (ii) to finance certain leasehold improvements and the acquisition of capital equipment and additional facilities for the manufacture of causeway pontoons for the U.S. Navy; and (iii) for working capital.

1986 Common Stock Offering

On January 23, 1986 Wedtech issued through a subsequent public offering 1,750,000 Shares of its Common Stock, raising $17,718,000. The net proceeds to Wedtech from the sale of these Shares, after the underwriting discount, were $16,581,250. The prospectus states that the purpose of the offering was to raise funds for the reduction of certain bank debt incurred for working capital purposes and incurred to finance, in part, the Corporation's capital expenditure program.

1986 Note Offering

On August 22, 1986 Wedtech issued through a public offering $75,000,000 of 14% Senior Subordinated Notes due August 15, 1996. The net proceeds to Wedtech from the sale of the Notes, after the underwriting discount, were $72,375,000. The prospectus states that the purpose of the offering was to raise funds for the repayment of amounts outstanding under the Corporation's revolving credit and term loan agreement with certain banks, the principal amount of which aggregated $53,000,000, with the balance of offering proceeds to be used for working capital purposes, including possible acquisitions.

GG2/WED.R1.1

APPENDIX 3

SALES OF COMMON STOCK OF WEDTECH CORP.
BY SELECTED FORMER MANAGEMENT, EMPLOYEES AND CONSULTANTS
(UNAUDITED) AS REQUESTED BY COMMITTEE(1)

Seller	Date	Amount of Shares		Amount Realized	
John Mariotta	9/86	43,250)		$1,321,325	
	8/86	39,500)			
	7/86	72,700)			
	4/86	342,650		$3,640,656	
	6/85	59,850		$ 763,087	
	10/84	25,000		$ 337,912	
	8/84	33,375		$ 467,250	
	9/83	182,000		$2,700,880(2)	
Total			798,325		$9,231,110
Fred Neuberger	6/86	75,000		$ 693,750	
	4/86	221,666		$2,064,849	
	3/86	38,334		$ 431,257	
	8/85	59,850		$ 965,081	
	9/84	59,850		$ 837,900	
	4/84	20,000		$ 375,000	
	9/83	182,000		$2,700,880(2)	
Citibank as Pledgee for Fred Neuberger (re: $1,000,000 loan)	12/86	571,094		$ 448,646	
Total			1,227,794		$8,517,363
Mario Moreno	5/86	92,510		$ 834,170	
	4/86	218,067		$2,068,383	
	3/86	33,333		$ 374,996	
	5/85	28,976		$ 385,965	
	9/84	35,000		$ 490,000	
	9/83	36,000		$ 534,240(2)	
Total			443,886		$4,687,774
Anthony Guariglia	4/86	39,430		$ 377,539	
	3/86	35,833		$ 403,590	
	8/85	3,925		$ 64,119	
	7/85	13,400		$ 195,325	
Total			92,588		$1,040,573
Lawrence Shorten	4/86	72,763		$ 662,167	
	3/86	2,500		$ 28,125	
	4/85	17,325		$ 227,391	
Total			92,588		$ 917,683
E. Robert Wallach	7/86	7,000)		$ 630,000	
	5/85	38,000)			
Total			45,000		$ 630,000
Lyn Nofziger	3/86	33,000		$ 325,875	
Total			33,000		$ 325,875
Mark Bragg	3/86	33,000		$ 325,875	
Total			33,000		$ 325,875
Ceil Lewis	1/86	5,850		$ 65,081	
Total			5,850		$ 65,081
TOTAL STOCK SALES			2,772,031		$25,741,334

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(1) The information set forth herein was obtained from Wedtech records including Rule 144 documents and records received from the transfer agent. The amounts realized are approximate based upon the above documents. In addition, the records of Wedtech are incomplete and otherwise subject to question.

(2) Sold pursuant to original public offering in August, 1983.

APPENDIX 4

ISSUANCE OF WEDTECH COMMON STOCK TO SELECTED MANAGEMENT, EMPLOYEES, CONSULTANTS AND PROFESSIONALS(1) AS REQUESTED BY COMMITTE

	Date of Issue	No. of Shares(2)	Stated Consideration (if any)
John Mariotta	(3)	2,610,562.5	
Fred Neuberger	(3)	2,610,562.5	
Mario Moreno	(3)	516,375	
Anthony Guariglia	06-21-83	101,250	Nominal cash; To induce employment
Lawrence Shorten	06-21-83	101,250	Services rendered
Richard Biaggi	06-21-83	168,750	Services rendered
Richard Bluestine	10-01-83	229,950	Nominal cash; To induce employment
Mark Bragg	06-21-83	33,750	Services rendered
Ciluffo Associates	06-21-83	18,000	N/A
Bernard Ehrlich	06-21-83	168,750	Services rendered
Ceil Lewis	06-21-83	17,550	Services rendered
Lyn Nofziger	06-21-83	33,750	Services rendered
E. Robert Wallach	06-21-83	67,500	Services rendered
Squadron, Ellenoff Plesent & Lehrer	06-21-83	67,500	Services rendered
NY & Foreign Securities Corp.	06-21-83	4,500	N/A
Total		6,750,000	

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(1) Information set forth on this schedule has been obtained from records of Wedtech Corp. and filings made by Wedtech Corp. with the United States Securities and Exchange Commission.

(2) Number of shares reflects a 3 for 2 stock split of September 18, 1985.

(3) Mariotta, Moreno and Neuberger obtained their shares either as the initial incorporators of Wedtech's predecessors or by mergers of companies formed by them into Wedtech.

MRP-SEN/WED.X1.1

STOCK OPTIONS GRANTED TO SELECTED FORMER MANAGEMENT, CONSULTANTS AND PROFESSIONALS OF WEDTECH CORP. AS REQUESTED BY COMMITTEE(1)

	Date of Grant	No. of Shares(2)	Exercise Price
Mario Moreno	04-16-85	6,666	15.0000
	04-16-85	126,668	15.0000
	05-10-84	16,666	15.0000
Anthony Guariglia	08-13-85	200,000	16.1875
	01-13-84	6,855	21.8800
	04-16-85	13,575	21.8800
	04-16-85	4,570	21.8800
	04-16-85	50,000	11.9400
Biaggi & Ehrlich	08-13-85	30,000	10.7916
W. Franklyn Chinn	04-30-85	75,000	9.7916
	08-13-85	37,500	10.7916
R. Kent London	04-30-85	75,000	9.2500
E. Robert Wallach	01-13-84	75,000	14.5860
	04-12-85	75,000	8.8733
James Jenkins	08-13-85	30,000	10.7916
Lyn Nofziger	04-12-85	37,500	8.8733
Eduard Pinkhasov	04-16-85	18,900	20.0000
	04-16-85	7,500	20.0000
	08-24-83	8,000	16.0000
	10-31-83	3,600	20.0000
Lawrence Shorten	01-13-84	9,140	21.8800
	04-16-85	11,290	21.8800
	04-16-85	25,000	13.1300
	04-16-85	4,570	21.8800
Squadron, Ellenoff Plesent & Lehrer	08-13-85	30,000	10.7916

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(1) Information set forth on this schedule has been obtained from records of Wedtech Corp. These records are in many cases incomplete.

(2) Number of shares reflects 3 for 2 split of September 18, 1985.

WED.X1.2

APPENDIX 5

PAYMENTS (SALARY AND OTHER) TO WEDTECH FORMER MANAGEMENT, (UNAUDITED) SELECTED CONSULTANTS AND PROFESSIONALS, AS REQUESTED BY COMMITTEE[*]

SCHEDULE OF PAYMENTS

A. Salaries & Bonuses to Former Management	1983	1984	1985	1986	TOTAL
1. John Mariotta	$350,000.00	$360,096.00	$321,154.00	$461,538.00	$1,492,788.00
2. Fred Neuberger	350,000.00	360,096.00	321,154.00	412,116.00	1,443,366.00
3. Mario Moreno	255,000.00	262,500.00	253,558.00	369,673.00	1,140,731.00
4. Anthony Guariglia	150,000.00	155,769.00	189,423.00	357,693.00	852,885.00
5. Lawrence Shorten	150,000.00	155,769.00	189,423.00	259,616.00	754,808.00
6. Richard Bluestine		118,750.00	0	0	118,750.00
7. Ceil Lewis	45,778.00	52,610.00	57,476.00	56,288.00	212,162.00
8. Richard Strum	6,327.00	35,000.00		80,366.00	121,693.00
Subtotals:	$1,307,105.00	$1,500,590.00	$1,332,188.00	$1,997,290.00	$6,137,183.00

B. Other Payments to Former Management	1982-1983	1984	1985-1986	TOTAL
1. John Mariotta[**]	$503,989.87	$91,619.95	$706,171.84	$1,301,781.66
2. Fred Neuberger[**]	284,223.96	26,725.87	29,431.08	304,380.91
3. Mario Moreno[**]	93,268.16	32,665.50	117,642.46	243,576.12
4. Anthony Guariglia[**]	22,313.34	77,507.58	129,882.92	229,703.84
5. Lawrence Shorten[**]	38,426.25	59,018.40	72,558.37	170,003.02
6. Richard Bluestine	22,594.49	97,446.91		120,041.40
7. Ceil Lewis	94,155.06	93,216.44	113,415.13	300,786.63
8. Richard Strum		7,764.30	29,172.29	36,936.59
Subtotals:	$1,058,971.13	$485,964.95	$1,198,274.09	$2,707,210.17

Total Payments to Former Management (A+B)	
1. John Mariotta[**]	$2,794,569.66
2. Fred Neuberger[**]	1,747,746.91
3. Mario Moreno[**]	1,384,307.12
4. Anthony Guariglia[**]	1,082,588.84
5. Lawrence Shorten[**]	924,811.02
6. Richard Bluestine[***]	238,791.40
7. Ceil Lewis	512,948.63
8. Richard Strum	158,629.59
Totals:	$8,844,393.17

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[*] The payments contained herein were derived primarily from a review of the main operating account maintained by Wedtech for the years indicated. Several other accounts existed which have not as yet been fully analyzed. There may have been additional payments to the noted individuals from the main operating account as well as payments made to third parties on behalf of the individuals named herein which are not included in this Appendix. In addition, the records of Wedtech themselves are incomplete and otherwise subject to question.

[**] The figures contained herein do not include sums allegedly stolen from the Company and also do not include substantial travel and entertainment charges made to the Company. Based upon an indictment filed in the Southern District of New York an additional $5.5 million was allegedly stolen by Wedtech's former management through a kick-back scheme involving contractors of Wedtech. This sum is also not included in this schedule.

[***] This does not include a $955,000 loan to Bluestine from Wedtech and Wedtech stock which Neuberger confessed to be valued in excess of $1 million.

Payments (Other Than Stock) to Certain Consultants	1982-1983	1984	1985-1986	TOTAL
1. Ines Capo		$44,394.08		$44,394.08
2. W. Franklin Chinn****			$46,891.82	46,891.82
3. Enterprise 2000		89,000.00	38,500.00	127,500.00
4. Executive Marketing		38,564.00	286,250.00	324,814.00
5. R. Kent London****			1,385,304.61	1,385,304.61
6. James Jenkins			169,055.54	169,055.54
7. Lyn Nofziger (U.S. Trading Co.)	$69,032.51	85,562.80	80,000.00	234,595.31
8. Navy Services Int'l			75,229.71	75,229.71
9. Gordon Osgood		91,757.00	56,570.08	148,145.08
10. Porta Tech			5,000.00	5,000.00
11. Edward Pinkasov	59,684.75	103,000.00	149,500.00	312,184.75
12. Repcom Int'l		65,000.00	70,000.00	135,000.00
13. R. Vallone		24,600.00	65,600.00	90,200.00
14. E. Robert Wallach	130,808.73	453,813.83	933.00	585,555.56
15. C. Alexander West			67,500.00	67,500.00
Totals:	$259,525.99	$995,691.71	$2,496,334.76	$3,751,370.46

Payments (Other than Stock) to Professionals (Accountants and Law Firms)	1982-83	1984	1985-1986	TOTAL
1. Squadron, Ellenoff, Plesant, et al.	$169,995.95	$684,212.56	$1,599,586.05	$2,417,794.56
2. KMG Main Hurdman	234,200.00	500,618.00	669,949.00	1,404,767.00
3. Mitchell, Mitchell, & Mitchell		50,000.00	60,000.00	110,000.00
4. Touche Ross			1,683,579.00	1,683,579.00
5. Biaggi & Ehrlich	153,440.61	262,500.03	388,833.39	804,774.03
6. Dykema, Gossett, et al.		98,866.30	110,042.22	208,908.52
Totals:	$557,636.56	$1,596,196.89	$4,511,989.66	$6,629,823.11

**** The sums indicated for London and Chinn include direct payments only from the main operating account and do not include travel and entertainment expenses charged to the Company of more than $267,000.

CP-APP5/MRP-SEN

Subcommittee note: Appendixes 6 and 7 are retained in Subcommittee files.

Statement of
Donald R. Templeman
Before the
Senate Committee on Government
Affairs Subcommittee on Oversight
of Government Management

September 10, 1987

Mr. Chairman, members of the committee. At your request, I am appearing before you today as a private citizen and former Deputy Administrator of the U.S. Small Business Administration. I was Deputy Administrator of the SBA from April 1981 until August 1982. During the first part of my tenure as Deputy Administrator, Michael Cardenas was SBA's Administrator. When Mr. Cardenas left the agency in February 1982, I became Acting Administrator and remained so until Mr. James Sanders became Administrator in April 1982.

It is my understanding that the committee's main interest this morning is the 8 (a) contract awarded to the then Welbilt Electronic Die Corporation for procurement of small gasoline engines for the Army. Before discussing my recollection of the management process, decisions, etc., relating to the award of the contract, I would like to point out that I no longer have access to SBA records, nor do I have any records of my own regarding this matter and that my comments here this morning are based on my best recollection of events of approximately five years ago.

I believe it is important, as well, to comment on the conditions regarding the 8 (a) program that were operative during the time the Welbilt contract was under consideration. When Mr. Cardenas became Administrator of SBA and I became Deputy Administrator, we found the 8 (a) program to be in a very poor state. The true purpose of the 8 (a) program seemed to have become lost in an effort to award the maximum number of total dollars under the 8 (a) program. One of the results was that fewer than 50 firms were receiving over approximately 30 percent of the nearly $2 bilion awarded annually. Additionally, there were fewer than 2000 active firms in the 8 (a) portfolio, and many of those had never been seriously considered for an 8 (a) contract award. Management of the program was highly decentralized with each SBA Regional Office having unlimited authority for contract awards and utilization of Business Development Funds (BDE). Results of this management approach were less than satisfactory.

In order to improve management of the 8 (a) program, Mr. Cardenas implemented three controls: all contracts over a certain amount (which I do not recall) were to be submitted for his approval; all BDE expenditures over $50,000.00 and all advance payments of $100,000.00 or more required similar action.

It was because of this review function that I first became aware of the potential award of the Army's small engine procurement to Welbilt. I do not recall exactly when I first heard of the proposed Welbilt 8 (a) contract. It was sometime in the fall of 1981. It was, I believe, at approximately that same time that I was informed by SBA staff that the White House was interested in the award to Welbilt.

It was my understanding that the White House staff was interested in the award of the small engine contract going to Welbilt because of its potential as a means of fulfilling a promise the President had made in a speech he made in the Bronx to bring employment to that depressed area. The 8 (a) program, especially with the Army being the "Pilot" agency, offered a legal, relatively fast way to fulfill the promise by awarding a Government contract to a firm in that area and thus providing employment opportunities.

The first meeting at the Administrator's level with the Army was, I believe, in November 1981. As I recall, there were three major areas of concern. The first and the one of most concern to the Army was that Welbilt had proposed a price several million dollars more than the Army's internal estimate of the cost of the engines. The second concern was the extensive support Welbilt would require in the way of facilities and financing to actually perform the contract. The third concern was that this small engine procurement would be a one-time buy, because the Army already had a more advanced engine under development.

The question of price was one with which the Army was primarily concerned, while the other questions were more properly SBA's concern. This is not to say that SBA was not sensitive to the need to establish a fair price; however, the Defense Department procurement regulations require that the procuring agency's Contracting Officer certify that a contract price is "fair and reasonable". Without such a determination, a negotiated contract is not supposed to be executed by the government. Additionally, the SBA has never had the resources to adequately evaluate contract price for 8 (a) contracts.

Given that the price was basically the Army's responsibility, the Administrator properly took the position that SBA would not try to force the Army into a contract with Welbilt unless the Army could negotiate a price it found acceptable.

The question of the cost facilities and availability of financing to enable Welbilt to perform the contract was originally estimated, as I recall, at well over 10 million dollars. Additionally, the Army proposed at one point that SBA provide BDE funds to make up the price difference between the Welbilt price and the Army estimated cost, a proposal that was unacceptable to SBA.

While there was concern about spending so much to create a capability within Welbilt to produce engines which the Army would only purchase once, it was believed that such a capability could be utilized for similar engines or engine parts for the commerical market.

During the months following the November meeting with the Army, I was not very involved in the interaction between the parties regarding proposals, negotiations, audits, etc. Generally, SBA's Minority Small Business office represented SBA in these matters.

— About March of 1982, while I was Acting Administrator, I received a telephone call from the Deputy Counsel to the President, Mr. Jim Jenkins. In fact, over the next several weeks I had a number of telephone conversations with Mr. Jenkins regarding the small engine contract. Mr. Jenkins' interest brought me back into the details of the situation.

My main concern became the proper and limited use of SBA resources and authorities in supporting Welbilt for the small engine procurement. There was no longer any doubt that SBA would provide some support and use its 8 (a) authority to facilitate the award of a contract to Welbilt for the engines.

On May 19, 1982, there was a meeting at the White House, called by Jim Jenkins, with all of the involved parties represented (the Army, HUD, City of New York, Welbilt with several consultants, Mr. Jenkins and myself representing SBA). The purpose of the meeting was to determine the status of the various parts of the package. There were two major areas being worked out. There was still a significant difference in Welbilt's proposed price and the Army's estimated cost. There was also the question of the non-contractual support and financing that would be required.

As I recall, Welbilt had just recently submitted another proposal to the Army, but the Army had not had an opportunity to evaluate it. It was obvious, however, that even with the new proposal a significant price difference still existed. Mr. Jenkins essentially asked the Army to "go back and take another look at it" to see if the price difference could be resolved.

As for support and financing, it was agreed that some funds would come from HUD thru UDAG grants to the City of New York with New York providing funding to Welbilt for a new plant. I committed SBA to providing three million dollars in BDE funds for tooling and equipment and two million dollars in advance payments to finance the production of the engines.

After the May 19 White House meeting I had little to do with the Welbilt contract until I left the Deputy Administrator's position in August 1982. When I left, the Welbilt contract had not come to the Administrator's office for final approval nor, of course, had it been awarded.

This concludes my prepared remarks. I would be pleased to try and answer any questions you may have.

SBA U.S. Small Business Administration Washington, DC 20416

TESTIMONY OF

AUBREY A. ROGERS
DEPUTY REGIONAL ADMINISTRATOR
NEW YORK REGIONAL OFFICE
SMALL BUSINESS ADMINISTRATION

BEFORE
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

SEPTEMBER 9, 1987

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

IN YOUR LETTER OF 13 AUGUST 1987, YOU ASKED ME TO PROVIDE INFORMATON TO THIS SUBCOMMITTEE ON FIVE ISSUES RELATED TO THE SMALL BUSINESS ADMINISTRATION'S SECTION 8(a) PROGRAM. MY STATEMENT WILL TREAT THESE ISSUES IN THE ORDER LISTED IN THE LETTER.

1. WEDTECH'S 8(a) ELIGIBILITY IN LIGHT OF THE COMPANY'S PUBLIC STOCK OFFERING AND THE STOCK TRANSACTION ENTERED INTO AMONG ITS OWNERS IN LATE 1983.

WEDTECH'S PUBLIC STOCK OFFERING CAME TO SBA'S ATTENTION IN THE SUMMER OF 1983. THAT EVENT POSED A NOVEL QUESTION FOR THE SBA IN THAT, TO THE BEST OF MY KNOWLEDGE, PRIOR TO WEDTECH, NO 8(a) COMPANY HAD GONE PUBLIC AND CERTAINLY NONE HAD DONE SO AND REMAINED IN THE 8(a) PROGRAM.

THE SBA NEW YORK DISTRICT OFFICE IMMEDIATELY DISPATCHED A LETTER TO THE COMPANY SEEKING DETAILS REGARDING THE TRANSACTION, INCLUDING INFORMATION PERTAINING TO THE NET WORTH OF THE COMPANY AND ITS PRINCIPALS, OWNERSHIP AND BOARD CONTROL.

THE COMPANY RESPONDED PROVIDING INFORMATION WHICH SHOWED THAT JOHN MARIOTTA, THE PERSON ON WHOM ELIGIBILITY WAS BASED, NO LONGER CONTROLLED THE COMPANY, AND NO LONGER HAD AT LEAST A 51% INTEREST THEREIN. AFTER DISCUSSING THE MATTER IN AGENCY COMMITTEE, ON 14 SEPTEMBER 1983 THE NEW YORK DISTRICT OFFICE (NYDO) ISSUED A CERTIFIED LETTER ADDRESSED TO WELBILT ELECTRONIC DIE CORPORATION (WELBILT), AS WEDTECH WAS PREVIOUSLY KNOWN, SETTING FORTH SPECIFIC REASONS WHY THE COMPANY SHOULD BE TERMINATED FROM THE 8(a) PROGRAM. THE LETTER GAVE THE COMPANY 30 DAYS TO RESPOND. AS I RECALL, WELBILT SOUGHT AND RECEIVED ADDITIONAL TIME TO RESPOND.

IN THE MEANTIME, ANOTHER IMPORTANT DEADLINE FACED THE SBA AND THE COMPANY. EARLIER DURING 1983, THE SBA HAD CONSIDERED THE COMPANY'S REQUEST FOR AN EXTENSION OF ITS FIXED PROGRAM PARTICIPATION TERM (FPPT) - THE REGIONAL OFFICE'S RECOMMENDATION ON THAT MATTER WAS THEN AT CENTRAL OFFICE FOR FINAL ACTION. IN VIEW OF THE PENDING ELIGIBILITY DELIBERATIONS, IT WAS DECIDED IN LATE SEPTEMBER TO POSTPONE FINAL ACTION ON THE FPPT EXTENSION AND, INSTEAD, TO ISSUE A BRIDGE LETTER TO THE COMPANY, A DEVICE THEN USED BY THE SBA TO CONTINUE A FIRM'S 8(a) ELIGIBILITY PENDING PROCESSING OF ITS FPPT EXTENSION REQUEST. WELBILT RESPONDED TO THE 14 SEPTEMBER LETTER IN LATE DECEMBER, 1983.

THE COMPANY PRESENTED DOCUMENTS REFLECTING CERTAIN TRANSACTIONS WHICH TRANSFERRED SHARES OF STOCK TO JOHN MARIOTTA SUCH THAT, IF VALID, MR. MARIOTTA WOULD HAVE OWNED APPROXIMATELY 55% OF THE COMPANY. ADDITIONALLY, WEDTECH PRESENTED INFORMATION WHICH SHOWED THAT ITS BOARD, AT THAT DATE, CONSISTED OF FIVE INDIVIDUALS, THREE OF WHOM WERE HISPANICS AND EACH OF WHOM APPLIED FOR SOCIAL AND ECONOMIC DISADVANTAGED STATUS.

THIS INFORMATION WAS DISCUSSED AT THE NYDO. THAT OFFICE FOUND THAT WEDTECH WAS ELIGIBLE TO CONTINUE IN THE 8(a) PROGRAM AND IN EARLY JANUARY 1984, RECOMMENDED THAT THE REGIONAL OFFICE

CONCUR AND FORWARD TO CENTRAL OFFICE A RECOMMENDATION TO EXTEND WEDTECH'S FPPT FOR A PERIOD OF THREE (3) YEARS. THAT EXTENSION WOULD HAVE KEPT THE COMPANY IN THE PROGRAM THROUGH OCTOBER, 1986.

DUE TO THE NOVELTY OF THE ISSUE, THE NYDO CONSULTED WITH THE REGIONAL OFFICE DURING THE DISCUSSION OF THE ELIGIBILITY PROBLEM. THERE WERE THREE PRINCIPAL CONCERNS.

1. WAS THE STOCK TRANSFER TO JOHN MARIOTTA, A BONAFIDE, VALID TRANSACTION? AND IF SO,

2. WERE THE PRINCIPALS, JOHN MARIOTTA AND MARIO MARENO, ECONOMICALLY DISADVANTAGED IN VIEW OF THEIR SUBSTANTIAL NET WORTHS?

3. WAS THE COMPANY ITSELF ECONOMICALLY DISADVANTAGED? THAT IS, DID IT HAVE ADEQUATE ACCESS TO CREDIT AND CAPTITAL AS DID COMPANIES ITS SIZE IN THE SAME LINE OF BUSINESS?

DISTRICT COUNSEL, DAVID ELBAUM, RESEARCHED CONCERN #1 AND ISSUED AN OPINION CONCLUDING IN THE AFFIRMATIVE. AS TO THE SECOND CONCERN, THE SBA STANDARD AS EXPRESSED IN STANDARD

OPERATION PROCEDURE (SOP) 80-05 DATED JUNE 16, 1982, SPOKE TO WHETHER THE APPLICANT PRINCIPALS (HERE MARIOTTA AND MARENO) HAD ACCESS TO CREDIT AND CAPITAL SIMILIAR TO OTHER PERSONS IN LIKE BUSINESSES. THE DISTRICT OFFICE'S DETERMINATION WAS THAT THEY DID NOT, ARGUING THAT THEIR HIGH NET WORTH CONSISTED MAINLY OF STOCK WHICH THE SECRUTIES AND EXCHANGE COMMISSION PROHIBITED THEM FROM TRANSFERRING FOR TWO YEARS. ADDITIONALLY, THE DISTRICT ARGUED THAT PERSONS ENGAGED IN BUSINESSES OF THIS NATURE NEEDED SIZEABLE NET WORTHS IN ORDER TO INDUCE FINANCIAL INSTITUTIONS TO EXTEND CREDIT.

A SIMILIAR ARGUMENT CARRIED WITH RESPECT TO THE COMPANY'S ECONOMIC DISADVANTAGED STATUS. ADDITIONALLY, IT WAS RECOGNIZED THAT 8(a) REQUIREMENTS COMPRISED APPROXIMATELY 95% OF THE COMPANY'S WORKLOAD, WHICH MEANT THAT THE COMPANY WOULD PROBABLY HAVE GONE INTO BANKRUPTCY HAD IT BEEN TERMINATED FROM THE 8(a) PROGRAM AT THAT TIME.

THE REGIONAL OFFICE CONCURRED IN THESE FINDING AND RECOMMENDED APPROVAL OF A 3-YEAR EXTENSION. APPROVAL WAS GRANTED ON 25 JANUARY, 1984.

2. WEDTECH'S ECONOMIC DISADVANTAGED STATUS IN '84, '85 AND '86.

WEDTECH REMAINED ELIGIBLE FOR THE 8(a) PROGRAM DURING 1984. IN 1985, THE COMPANY'S ELIGIBILITY WAS QUESTIONED ONCE AGAIN. THE 1983 STOCK TRANSFER REQUIRED JOHN MARIOTTA TO MAKE CERTAIN PAYMENTS BY JANUARY, 1985. FAILURE TO DO SO WOULD HAVE TRIGGERED CANCELLATION OF THE TRANSACTION, THEREBY IMPAIRING OWNERSHIP AND CONTROL. MR. MARIOTTA FAILED TO MAKE THE PAYMENTS; HOWEVER, THE PARTIES AGREED TO AN EXTENSION OF THE TERMS THROUGH JANUARY '86, THEREBY AVOIDING REVERSION AND SATISFYING SBA'S CONCERNS ABOUT ELIGIBILITY.

LATER THAT YEAR (1985), THE DISTRICT OFFICE CONDUCTED AN ANNUAL REVIEW OF THE FIRM AND CONCLUDED THAT THE FIRM WAS IN A SUPERIOR FINANCIAL CONDITION (BY THAT TIME THE COMPANY HAD FLOATED A BOND ISSUE VALUED AT APPROXIMATELY $40 MILLION) AND WAS NO LONGER ECONOMICALLY DISADVANTAGED. ON MAY 1, 1985, THE DISTRICT OFFICE WROTE TO JOHN MARIOTTA STATING THAT THE SBA CONSIDERED WEDTECH INELIGIBLE FOR THE 8(a) PROGRAM AND REQUIRING A RESPONSE IN 30 DAYS. IN JUNE, 1985 THE COMPANY INFORMED THE SBA OF CHANGES IN THE BOARD OF DIRECTORS AND THAT JOHN MARIOTTA HAD BEEN REMOVED FROM THE OFFICE OF PRESIDENT.

ON JUNE 25, 1985, THE NYDO AGAIN WROTE THE COMPANY. THE SBA LETTER STATED THAT ELIGIBILITY WAS IN JEOPARDY CITING LOSS OF CONTROL BY THE ECONOMICALLY DISADVANTAGED INDIVIDUALS AND AGAIN GIVING 30 DAYS TO RESPOND.

ON JULY 11, 1985, THE COMPANY, THROUGH ITS ATTORNEYS, BIAGGI AND ERLICH, REQUESTED AN EXTENSION TO RESPOND TO SBA'S LETTER OF MAY 1985. THE DISTRICT OFFICE GRANTED AN EXTENSION TO SEPTEMBER 16, 1985.

WEDTECH RESPONDED BY THE DUE DATE AND THE INFORMATION IT SUBMITTED WAS ANALYZED BY THE DISTRICT OFFICE. THE INFORMATION CLEARLY SHOWED THAT THE COMPANY HAD LOST ELIGIBILITY. THE REMAINING ADMINISTRATIVE TASK WAS TO PROCESS THE TERMINATION.

WHILE THE DISTRICT WAS PERFORMING THIS TASK, THE WALL STREET JOURNAL PUBLISHED A STORY IN ITS FEBRUARY 13th ISSUE WHICH SUGGESTED THAT JOHN MARIOTTA HAD NOT PAID FOR THE "TRANSFERRED" STOCK AND THAT THE STOCK HAD REVERTED TO ITS ORIGINAL OWNERS.

THE DISTRICT IMMEDIATELY WROTE THE FIRM SEEKING CONFIRMATION. WEDTECH RESPONDED AND ON THE BASIS OF THE INFORMATION PROVIDED, THE DISTRICT OFFICE INFORMED THE COMPANY ON MARCH 26, 1986 THAT ITS ELIGIBILITY WAS IN QUESTION AND THAT THAT OFFICE INTENDED

TO RECOMMEND TERMINATION OF THE FIRM FROM THE 8(a) PROGRAM. THE COMPANY RESPONDED BY AGREEING TO VOLUNTARILY WITHDRAW FROM THE PROGRAM AND AN AGREEMENT TO THAT EFFECT WAS EXECUTED AND APPROVED BY THE ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS (AA/MSB) ON APRIL 9, 1986.

3. THE DECISION TO EXTEND WEDTECH'S FIXED PROGRAM PARTICIPATION TERM.

I HAVE ALREADY ALLUDED TO THIS SUBJECT IN ITEM #1. I WILL ONLY ADD HERE THAT SOP 80-05 REQUIRES AN 8(a) FIRM TO SUBMIT EXTENSION REQUESTS ONE (1) YEAR PRIOR TO THE EXPIRATION OF ITS CURRENT TERM, IN THE CASE OF WEDTECH (THEN WELBILT), PRIOR TO 12 OCTOBER 1982.

THE COMPANY SUBMITTED ITS REQUEST IN A TIMELY MANNER AND IT WAS PROCESSED IN THE DISTRICT AND REGIONAL OFFICES. ON JUNE 19, 1983, THE REGIONAL OFFICE FORWARDED ITS RECOMMENDATION TO CENTRAL OFFICE SEEKING TO EXTEND WEDTECH'S FPPT FOR A PERIOD OF FOUR (4) YEARS.

ON 19 AUGUST, 1983, THE DISTRICT OFFICE ADVISED THE CENTRAL OFFICE THAT IT HAD RECEIVED INFORMATION REGARDING THE PUBLIC OFFERING AND THAT THERE WAS A POSSIBILITY THAT WEDTECH (THEN WELBILT) WOULD BE FOUND INELIGIBLE FOR THE 8(a) PROGRAM.

ON 22 SEPTEMBER, 1983, THE DISTRICT OFFICE FORWARDED ANOTHER MEMORANDUM TO CENTRAL OFFICE REQUESTING THAT A BRIDGE LETTER BE ISSUED IN ORDER TO PERMIT PROPER HANDLING OF THE TERMINATION ACTION WHICH HAD BEEN INSTITUTED EARLIER DURING THE SUMMER.

THE CENTRAL OFFICE AGREED AND ISSUED THE BRIDGE LETTER, THE STRATEGY BEING TO DELAY ACTION ON THE FPPT EXTENSION UNTIL THE ELIGIBILITY ISSUE WAS SETTLED. THAT EVENT OCCURRED IN JANUARY, 1984 WHEN THE DISTRICT OFFICE FOUND THE FIRM ELIGIBLE AND FORWARDED AN AMENDED FPPT EXTENSION REQUEST FOR 3 YEARS TO THE REGIONAL OFFICE FOR PROCESSING. THE REGION CONCURRED AND ON 25 JANUARY, 1984, THE AA/MSB APPROVED AN EXTENSION OF WEDTECH'S FPPT TO 12 OCTOBER, 1986.

I HAVE ALREADY DETAILED THE CONSIDERATIONS DISCUSSED WITH RESPECT TO THE MATTER OF ELIGIBILITY. THE REMAINING QUESTION IS: WHY AN EXTENSION FOR 3 YEARS? THIS DECISION WAS MADE

MAINLY FOR PROGRAMMATIC REASONS. IT WAS FELT THAT WEDTECH NEEDED SUFFICIENT TIME TO BUILD UP ITS NON 8(a) MARKET AND TO GAIN GREATER EXPERIENCE ON THE ENGINE, AS WELL AS ON THE PONTOON PROJECTS. THE CONSENSUS WAS THAT TERMINATION AT AN EARLIER DATE WOULD HAVE HAD MAJOR ADVERSE EFFECT ON THE COMPANY'S OPERATIONS, POSSIBLY LEADING TO BANKRUPTCY. ADDITIONALLY, SINCE SBA'S REGULATIONS PROHIBITED A FURTHER EXTENSION IT WAS FELT THAT ERRING ON THE SIDE OF A LENGTHY EXTENSION WAS PREFERABLE TO A SHORTER ONE, FOR OBVIOUS REASON.

4. THE SELECTION OF WEDTECH FOR THE NAVY PONTOON CONTRACT AND OPTION IN 1984.

IN JUNE 1983, I WAS DETAILED FROM MY POSITION OF DARA/MSB IN THE NEW YORK REGIONAL OFFICE TO THE POSITION OF ASSISTNT TO JOSEPH BENNETT, ACTING ASSOCIATE ADMINISTRATOR, MSB/COD IN CENTRAL OFFICE. MY FUNCTION WAS TO ASSIST MR. BENNETT ON MATTERS AS ASSIGNED. SELECTION OF CONTRACTORS FOR THE PONTOON PROJECT WAS ONE SUCH ASSIGNMENT.

DURING THE SUMMER OF 1983, MR. BENNETT ASKED ME TO WORK WITH HIM IN SELECTING CONTRACTORS FOR THE PONTOON PROJECT. AS I UNDERSTOOD IT, THE SBA WAS INTERESTED IN THIS PROJECT BECAUSE IT OFFERED NON-TRADITIONAL AND HIGH DOLLAR VOLUME CONTRACTING OPPORTUNITIES FOR 8(a) FIRMS.

I ATTENDED A MEETING WITH NAVY OFFICIALS AT WHICH THEY BRIEFED SBA STAFF ON THE PROJECT. SUBSEQUENT STAFF MEETINGS WERE HELD AND AS I UNDERSTOOD IT, MR. BENNETT AND I WERE ASSIGNED TO DEVELOP A LIST OF CONTRACTORS FOR THE PROJECT, SOME OF WHOM WOULD SERVE AS PRIMES AND OTHERS AS SUBCONTRACTORS.

OUR LIST, WHICH I DID NOT KEEP, CONTAINED SEVERAL NAMES INCLUDING WEDTECH, MEDLEY TOOL OF PHILADELPHIA, BAY CITY MARINE, TWO COMPANIES IN TEXAS, ONE IN ATLANTA, AND ANOTHER IN CHICAGO.

I LEFT THE CENTRAL OFFICE ASSIGNMENT IN SEPTEMBER, 1983 AND RETURNED TO PERMANENT DUTY IN NEW YORK. HOWEVER, I WAS ASKED TO CONTINUE ON THE PONTOON ASSIGNMENT THROUGH THE CONTRACTOR SELECTION PROCESS. ACCORDINGLY, I RETURNED TO WASHINGTON PERIODICALLY TO WORK ON THE ASSIGNMENT.

AS DISCUSSIONS WITH THE NAVY CONTINUED IT BECAME CLEAR THAT THE NAVY WANTED TO DEAL WITH ONE PRIME CONTRACTOR AND NO MORE THAN ONE SUBCONTRACT. AND AS I RECALL IT, FOR THE FIRST PHASE OF THE CONTRACT, THE NAVY WANTED AN EAST COAST CONTRACTOR NEAR TO A MAJOR WATERWAY. WEDTECH AND MEDLEY FITTED THESE CRITERIA. THE NEXT DECISION WAS TO DETERMINE THE PRIME. WEDTECH HAD SUPERIOR FINANCIAL STRENGTH AND DEMONSTRATED ENGINE CAPABILITY. THE NAVY CONDUCTED A PRE-AWARD SURVEY AND ACCEPTED WEDTECH AS PRIME AND MEDLEY AS SUBCONTRACTOR.

IN JANUARY, 1984 THE NAVY OFFERED THE PONTOON REQUIREMENT TO THE SBA AND WEDTECH COMENCED DEVELOPMENT OF A PROPOSAL TO INCLUDE MEDLEY AS A SUBCONTRACTOR. UNFORTUNATELY, DUE TO INTERNAL PROBLEMS AT MEDLEY, THAT COMPANY WAS UNABLE TO SUBMIT A SATISFACTORY PROPOSAL AND IT SUBSEQUENTLY WITHDREW FROM THE PROJECT.

NEGOTIATIONS TOOK PLACE DURING MARCH AND A CONTRACT WITH OPTIONS WAS SIGNED IN APRIL, 1984.

5. THE ROLE OF POLITICAL PRESSURE IN THE AWARD OF 8(a) CONTRACTS AND OTHER SBA DECISIONS WITH REGARD TO THE 8(a) PROGRAM.

IN MY ROLE AS DEPUTY REGIONAL ADMINISTRATOR I HAVE HAD TO RESPOND TO A VARIETY OF INQUIRES FROM POLITICAL FIGURES. THESE INQUIRES HAVE RUN THE GAMUT: FROM 8(a) MATTERS, TO FORGIVENESS ON A $2,000 DISASTER LOAN, TO INQUIRES ADVOCATING THAT MORE EMPLOYEES BE ASSIGNED TO AN AREA. I WOULD NOT CHARACTERIZE THESE INQUIRES AS POLITICAL PRESSURE. I REGARDED THEM MERELY AS ROUTINE INQUIRIES PERTAINING TO THE STATUS OF THE CONTITUTENT OF THE POLITICAL FIGURE AND I RESPONDED, PROMPTLY AND COURTEOUSLY, WITH DUE REGARD FOR THE OFFICE BUT WITHOUT REGARD TO POLITICAL CONSEQUENCES.

I BELIEVE THAT MY EXPERIENCE IS SHARED BY THE MAJORITY OF EMPLOYEES WITHIN THE SBA AND AT THE RISK OF BEING NAIVE, I WOULD VENTURE THAT IF POLITICAL PRESSURE IS EXERTED WITHIN THE SBA IT IS LIMITED IN SCOPE AND EFFECT.

MR. CHAIRMAN, I TRUST THAT THESE REMARKS RESPOND FULLY TO THE ISSUES RAISED IN YOUR LETTER. I WILL BE HAPPH TO ANSWER ANY QUESTIONS THAT YOU OR THE OTHER MEMBERS OF THE SUBCOMMITTEE MAY HAVE.

SBA U.S. Small Business Administration Washington, DC 20416

STATEMENT OF

EDRIC C. ROSE

ASSISTANT REGIONAL ADMINISTRATOR
FOR MINORITY SMALL BUSINESS
NEW YORK, N.Y., REGIONAL OFFICE

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

SEPTEMBER 9, 1987

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

MY NAME IS EDRIC C. ROSE AND I AM THE ASSISTANT REGIONAL ADMINISTRATOR FOR MINORITY SMALL BUSINESS LOCATED IN THE SMALL BUSINESS ADMINISTRATION'S NEW YORK REGIONAL OFFICE.

MY TESTIMONY WILL ADDRESS THOSE QUESTIONS WHICH WERE ADDRESSED TO ME IN YOUR LETTER OF INVITATION.

WEDTECH CORPORATION - OVERVIEW

SOMETIME DURING THE MIDDLE OF 1983 MY OFFICE BECAME AWARE OF THE FACT THAT WELBILT CORPORATION WAS IN THE PROCESS OF SEEKING THE SECURITY AND EXCHANGE COMMISSION'S APPROVAL TO MAKE A PUBLIC OFFERING OF A LARGE PERCENTAGE OF ITS STOCK. THIS EFFORT WAS COMMENCED WITHOUT SEEKING SBA'S APPROVAL OF A CHANGE IN STOCK OWNERSHIP WHICH COULD HAVE AFFECTED THE FIRM'S ELIGIBILITY FOR CONTINUED PARTICIPATION IN THE 8(a) PROGRAM.

AT THE TIME OF THIS DISCOVERY, THE NEW YORK DISTRICT HAD JUST COMPLETED A REVIEW OF THE FIRM'S REQUEST FOR AN EXTENSION OF ITS FIXED PROGRAM PARTICIPATION TERM AS AUTHORIZED BY PUBLIC LAW 96-481, AND HAD MADE A RECOMMENDATION TO THE OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS THAT THE FIRM BE GRANTED AN FPPT EXTENSION OF FOUR (4) YEARS.

THE NEW YORK OFFICE , ON JULY 12, 1983, WROTE TO JOHN MARIOTTA, PRESIDENT OF THE FIRM, SEEKING INFORMATION CONCERNING THE PROPOSED PUBLIC OFFERING, AS WELL AS THE FURTHER RUMOR THAT THE COMPANY NAME HAD BEEN CHANGED TO THAT OF WEDTECH CORPORATION.

ON AUGUST 13, 1983, A COMMITTEE OF DISTRICT OFFICIALS MET TO DISCUSS THE SITUATION AND RECOMMENDED THAT ACTION BE TAKEN IN COMPLIANCE WITH SBA'S REGULATIONS, TO PROPOSE TERMINATION OF THE FIRM'S 8(a) PROGRAM PARTICIPATION DUE TO ITS FAILURE TO MAINTAIN THE STANDARDS OF ELIGIBILITY, INCLUDING OWNERSHIP AND CONTROL.

ON AUGUST 19, 1983, THE ASSOCIATE ADMINISTRATOR WAS ADVISED OF THE SITUATION AND ON SEPTEMBER 22, 1983, HE WAS INFORMED THAT A CURE LETTER, NOTIFYING THE FIRM OF SBA'S PROPOSED TERMINATION ACTION, HAD BEEN ISSUED ON SEPTEMBER 14, 1983. BECAUSE OF THIS IT WAS REQUESTED THAT A BRIDGE LETTER BE ISSUED EXTENDING THE TERM OF THE FIRM UNTIL THE ACTIONS WERE COMPLETED AND A DECISION MADE AS TO THE FPPT EXTENSION.

ON SEPTEMBER 27, 1983, A BRIDGE LETTER WAS ISSUED BY THE ASSOCIATE ADMINISTRATOR GIVING THE FIRM FOUR MONTHS WHILE THE REVIEW OF THE FACTS CONTINUED.

ON DECEMBER 12, 1983, THE LAW FIRM OF BIAGGI AND EHRLICH SUBMITTED INFORMATION IN RESPONSE TO THE CURE LETTER. ADDITIONAL INFORMATION WAS SUBMITTED ON DECEMBER 20, 1983. THEY WERE REVIEWED AND ON DECEMBER 27, 1983, A LETTER WAS MAILED TO THE FIRM SIGNED BY PETER NEGLIA REGIONAL ADMINISTRATOR, ADVISING THAT ADDITIONAL INFORMATION WAS NEEDED TO ENABLE SBA TO COMPLETE ITS REVIEW OF THE FACTS.

ON JANUARY 4, 1984, THE ATTORNEY'S FOR THE COMPANY, BIAGGI AND EHRLICH, SUBMIT ADDITIONAL DATA WHICH WAS REVIEWED BY SBA AND THE ACTING DISTRICT DIRECTOR, FORWARDED TO THE REGION A MEMORANDUM INDICATING THAT BASED ON THE REVIEW OF THE DATA SUBMITTED, THE FIRM HAD SUPPORTED ITS CLAIM THAT IT WAS STILL OWNED AND CONTROLLED BY PERSONS WHO WERE SOCIALLY AND ECONOMICALLY DISADVANTAGED. THE DISTRICT RECOMMENDED A THREE (3) YEAR EXTENSION OF THE FIRM'S FPPT. ACCOMPANING THAT MEMORANDUM WAS THE OPINION OF DISTRICT COUNSEL, DAVE ELBAUM.

BASED ON ALL THE DATA IN THE FILES, I PREPARED A MEMORANDUM TO PETER NEGLIA SUPPORTING THE RECOMMENDATION OF THE DISTRICT DIRECTOR. I ALSO PREPARED A MEMORANDUM FOR HIS SIGNATURE, ADDRESSED TO THE ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS WITH THAT RECOMMENDATION. THAT LETTER WAS FINALIZED AND MAILED ON JANUARY 11, 1984.

ON JANUARY 23, 1984, THE COMPANY WAS ADVISED BY THE NEW YORK DISTRICT DIRECTOR THAT SBA HAD ACCEPTED ITS SUBMISSIONS AS SATISFYING THE CONCERNS RAISED.

ON JANUARY 25, 1984, THE ASSOCIATE ADMINISTRATOR ISSUED A LETTER TO THE FIRM APPROVING A THREE (3) YEAR EXTENSION OF ITS FIXED PROGRAM PARTICIPATION TERM.

1. WEDTECH'S 8(a) ELIGIBILITY

WEDTECH CORPORATION, FORMERLY WELBILT ELECTRONIC DIE CORPORATION, WAS APPROVED BY THE NEW YORK DISTRICT FOR 8(a) PROGRAM PARTICIPATION IN 1976. THE INDIVIDUAL UPON WHOM ELIGIBILITY WAS BASED WAS JOHN MARIOTTA, A HISPANIC MACHINIST FROM THE BRONX, NEW YORK. MR. MARIOTTA OWNED THE MAJORITY OF THE STOCK OF THE FIRM. HIS PARTNER WAS FRED NEUBERGER.

ACTION TAKEN BY THE FIRM IN MID 1983 TO RAISE CAPITAL THROUGH THE ISSUANCE OF COMMON STOCK TO BE TRADED ON THE OPEN MARKET, CAUSED SBA TO REVIEW THE SITUATION TO DETERMINE WHETHER OR NOT THE FIRM'S ELIGIBILITY WAS AFFECTED. IT APPEARED THAT THE SURRENDER OF 39% OF THE COMPANY STOCK FOR PLACEMENT ON THE MARKET, TOGETHER WITH THE INCLUSION OF A NUMBER OF INDIVIDUALS, NOT PREVIOUSLY OWNING STOCK, AS SHAREHOLDERS AND MEMBERS OF THE BOARD OF DIRECTORS, CREATED A SITUATION WHICH DID, IN FACT, REMOVE CONTROL OF THE CORPORATION FROM JOHN MARIOTTA. THE FIRM RECOGNIZED THE PROBLEM AND TOOK STEPS TO CORRECT IT.

ACTIONS TAKEN TO REMEDY THIS SITUATION INCLUDED MAKING MARIO MORENO AND ALFRED RIVERA INDIVIDUALS UPON WHOM ELIGIBILITY WOULD BE BASED, WHILE FOUR OF THE STOCKHOLDERS SOLD SHARES OF STOCK TO JOHN MARIOTTA WHICH SHARES WERE TRANSFERRED UPON THE EXECUTION OF A DOCUMENT REQUIRING PAYMENT OVER TEN YEARS, IN EQUAL INSTALLMENTS, AT THE QUOTED PRICE OF THE STOCK IMMEDIATELY PRIOR TO THE INSTALLMENT BECOMING DUE AND PAYABLE.

A REVIEW OF THE AGREEMENT BY THE LEGAL OFFICE IN THE NEW YORK DISTRICT RESULTED IN AN OPINION THAT THE AGREEMENTS WERE "VALID, BINDING AND ENFORCEABLE." DISTRICT COUNSEL NOTED THAT FAILURE OF JOHN MARIOTTA TO BEGIN PAYMENTS BY JANUARY 1986 WOULD CAUSE HIM TO LOSE CONTROL OF THE CORPORATION.

A REVIEW OF ALL THE DATA, INCLUDING THE LEGAL OPINION AND RECOMMENDATION BY THE DISTRICT DIRECTOR, CAUSED THE ARA/MSB TO CONCUR WITH THE DISTRICT AND TO RECOMMEND THAT, IN THE LIGHT OF THESE FACTS, WEDTECH CORPORATION BE GRANTED AN EXTENSION OF THREE (3) YEARS IN THE PROGRAM. THE COMPANY APPEARED TO HAVE SATISFIED THE REQUIREMENTS FOR OWNERSHIP THROUGH THE SALE AND TRANSFER OF STOCK, AND FOR CONTROL, THROUGH THE INCLUSION OF MARIO MORENO AND ALFRED RIVERA AS INDIVIDUALS UPON WHOM ELIGIBILITY WAS BASED.

THIS RECOMMENDATION WAS FORWARDED TO WASHINGTON FOR FINAL APPROVAL AND RESULTED IN A LETTER FROM THE ASSOCIATE ADMINISTRATOR, DATED JANUARY 25, 1984, GRANTING A THREE YEAR FPPT EXTENSION.

2. WEDTECH'S "ECONOMICALLY DISADVANTAGED" STATUS 1984, 1985 AND 1986.

WEDTECH CORPORATION'S ABILITY TO ACCESS CAPITAL AND CREDIT WAS SOMEWHAT RELIEVED AFTER THE STOCK OFFERING WHICH RESULTED IN CERTAIN SUMS OF MONEY BEING AVAILABLE FOR USE IN CONTRACT PERFORMANCE. THE FIRM'S EXPENDITURES FOR ESTABLISHING A PLANT AT 149th STREET IN THE HUNTS POINT AREA OF THE BRONX, FOR WORK ON THE PONTOON CONTRACT WAS, HOWEVER, SUBSTANTIAL. THE FINANCIAL STATEMENTS SUBMITTED BY THE FIRM AND BY THE PRINCIPALS OF THE FIRM CONTAINED ESTIMATED VALUES OF STOCK HELD WHICH WERE NOT LIQUID AND WHICH COULD NOT BE SOLD FOR AT LEAST TWO YEARS FROM THE DATE OF ISSUANCE IN 1983. FURTHER, IF THERE WERE ANY LARGE BLOCKS OF STOCK OFFERED ON THE MARKET AT ANY GIVEN PERIOD, THEY WOULD HAVE HAD A VERY NEGATIVE IMPACT ON THE PRICE OF THE STOCK. FOR THESE REASONS, THE NET WORTHS OF THE PRINCIPALS COULD NOT BE TAKEN AT FACE VALUE WHEN ONE CONSIDERED THE QUESTION OF CREDIT WORTHINESS AND THE ABILITY TO OBTAIN WORKING CAPITAL LOANS.

BEYOND THIS WAS THE FACT THAT THE ENGINE CONTRACT CONTAINED OPTION CLAUSES WHICH, WHEN EXERCISED, WOULD FURTHER INCREASE THE FINANCIAL NEEDS OF WEDTECH CORP. AT THE SAME TIME WEDTECH WAS BEING CONSIDERED FOR THE PONTOON CONTRACT.

IN EVALUATING ECONOMIC DISADVANTAGED, THESE THINGS MUST BE CONSIDERED. THE NATURE OF THE BUSINESS FIRM IS A PRIME CONSIDERATION. THE OVERALL BUSINESS PLAN WITH ITS ESTABLISHED LEVELS OF SUPPORT AND THE NEEDED CAPITAL AND OTHER EXPENDITURES TO ATTAIN THOSE SUPPORT LEVELS MUST BE TAKEN INTO ACCOUNT. THUS, A FIRM IN DATA PROCESSING, OR IN ACCOUNTING, OWNED BY AN INDIVIDUAL WITH A HALF A MILLION DOLLAR NET WORTH MIGHT NOT BE CONSIDERED ECONMICALLY DISADVANTAGED. ON THE OTHER HAND, A MANUFACTURER OF PERSONAL COMPUTERS WOULD BE HARD PRESSED TO MEET ITS CAPITAL OUTLAYS AND WORKING CAPITAL NEEDS IF THE ONLY SOURCE OF FUNDING WAS THE $500,000 NET WORTH OF THE OWNER.

SBA'S REVIEW AND ANALYSIS OF THE SITUATION AS INDICATED BY THE FINANCIAL STATEMENTS OF THE PRINCIPALS OF THE FIRM IN 1984 AND 1985, CAUSED THE DISTRICT OFFICE TO CONCLUDE THAT THE INDIVIDUALS UPON WHOM ELIGIBILITY WAS BASED WERE INDEED ECONOMICALLY DISADVANTAGED.

THERE WAS NO EVALUATION DONE IN 1986.

3. SBA'S DECISION TO EXTEND WEDTECH'S FPPT

THE DATA PROVIDED IN ONE (1) ABOVE IS, IN PART, SUPPORT FOR THE DECISION TO EXTEND THE FIRM'S FIXED PROGRAM PARTICIPATION TERM.

THE FACT THAT SBA HAD MATCHED WEDTECH WITH A LARGE CONTRACT TO BUILD AN ENGINE AND WAS ALSO ATTEMPTING TO SECURE A SECOND ENGINE CONTRACT IN 1983, WAS A REASON FOR THE RECOMMENDATION TO EXTEND THE TERM. BY THE TIME THE MATTER OF THE PUBLIC SALE OF THE STOCK WAS SETTLED, SBA WAS WORKING TOWARDS OBTAINING THE PONTOON CONTRACT. BY THEN THE SECOND ENGINE CONTRACT HAD BEEN LOST. THE RECOMMENDATION WAS, HOWEVER, IMPACTED BY THE FACT THAT WEDTECH CORP. HAD FOUND A PARTIAL SOLUTION TO ITS FINANCIAL NEEDS AND THUS WAS THOUGHT TO BE ABLE TO SURVIVE WITH LESS SBA SUPPORT, THUS THE REDUCTION OF THE TERM FROM FOUR (4) TO THREE (3) YEARS.

4. THE SELECTION OF WEDTECH FOR THE NAVY PONTOON CONTRACT IN 1984.

THE DETAILS OF THIS SELECTION ARE SOMEWHAT HAZY SINCE I WAS NOT DIRECTLY INVOLVED. THE NORMAL PROCEDURE FOR MARKETING FOR ANY REQUIREMENT IN THE 8(a) PROGRAM IS THAT THE DISTRICT OFFICE OF MSB SENDS A SEARCH LETTER TO THE TARGET AGENCY SEEKING A SET-ASIDE OF A PARTICULAR REQUIREMENT. SHOULD THE EFFORTS OF THE DISTRICT FAIL, AFTER TALKS WITH THE PROCUREMENT OFFICES AND THE AGENCY'S SMALL AND DISADVANTAGED BUSINESS UTILIZATION OFFICE, THE DISTRICT MAY ELEVATE THE MATTER TO THE AGENCY'S HEAD.

I DO NOT BELIEVE THIS MATTER HAD TO BE ELEVATED. MY RECOLLECTION IS THAT THERE WAS AN EFFORT MADE TO FIND A NUMBER OF 8(a) FIRMS, AND UNDER A JOINT VENTURE TYPE ARRANGEMENT, THIS CONTRACT WOULD HAVE BEEN PERFORMED. THAT EFFORT WAS PROBABLY PLANNED UNDER SBA'S PILOT PROGRAM WHICH TARGETED DOD AS THE AGENCY FROM WHICH SBA COULD IDENTIFY AND SELECT, WITHOUT OPPOSITION, UNUSUAL PROCUREMENTS FOR 8(a) NEGOTIATION.

THE OUTCOME WAS THAT WEDTECH WAS AWARDED THE CONTRACT. I KNOW THAT ONE OF THE COMPETITORS, MEDLEY TOOL, DID, AS A SUBCONTRACTOR, SUBMIT A PROPOSAL TO WEDTECH WHICH WAS CONSIDERED UNACCEPTABLE. I WAS NOT INVOLVED IN THE DISCUSSIONS.

5. THE Role OF POLITICAL PRESSURE IN THE AWARD OF 8(a) CONTRACTS AND OTHER SBA DECISIONS WITH REGARD TO THE 8(a) PROGRAM

IT IS DIFFICULT TO EVALUATE THE OVERALL IMPACT OF POLITICAL INVOLVEMENT IN SBA DECISIONS. FROM WHERE I SIT IT WOULD APPEAR TO BE MUCH LESS SIGNIFICANT THAN IT IS GENERALLY BELIEVED TO BE.

THE PORTFOLIO PERCEIVES THE SENATOR OR CONGRESSMAN AS A MOVER AND SHAKER, WHO IS ABLE TO SPAR THE LAZY BUREAUCRAT INTO ACTION. IT IS FURTHER BELIEVED THAT ANY DECISION MADE AS A RESULT OF INTERVENTION BY A MEMBER OF CONGRESS IN BEHALF OF A PARTICULAR CONSTITUENT WILL BE POSITIVE. I FIND, HOWEVER, THAT INQUIRIES MADE BY A CONGRESSMAN OR A SENATOR ABOUT A MATTER PENDING IN THIS OFFICE IS USUALLY TO OBTAIN THE FACTS IN THE CASE AND TO BE ASSURED THAT SBA IS HANDLING THE MATTER IN A FAIR AND OBJECTIVE FASHION. I HAVE YET TO HAVE A SENATOR OR CONGRESSMAN TELL ANYONE AT MY LEVEL WHAT HE EXPECTS SBA TO DO WITH RESPECT TO ANY MATTER BEFORE IT.

THE FACT IS, HOWEVER, THAT DIFFERENT PEOPLE REACT DIFFERENTLY TO THEIR CALLS OR LETTERS. I BELIEVE THAT MOST PEOPLE TRY TO EXPEDITE AN ACTION IF THERE IS A CONGRESSIONAL INQUIRY. I DO NOT BELIEVE, ON THE OTHER HAND, THAT THIS RESULTS IN MORE THAN THE NORMAL PERCENTAGES OF APPROVALS AND DENIALS. I AM NOT ABLE TO ADDRESS DECISIONS MADE BY POLITICAL APPOINTEES WHO MIGHT OWE THEIR POSITIONS TO CERTAIN POLITICIANS. STILL, I HAVE NEVER HAD A POLITICAL APPOINTEE TELL ME THE OUTCOME HE EXPECTED WITH RESPECT TO A PARTICULAR CASE I WAS HANDLING.

MR. CHAIRMAN, THIS COMPLETES MY PREPARED STATEMENT. I WILL BE HAPPY TO RESPOND TO ANY QUESTIONS YOU MAY HAVE.

SBA
U.S. Small Business Administration Washington, DC 20416

STATEMENT OF
ROBERT B. WEBBER
GENERAL COUNSEL
U.S. SMALL BUSINESS ADMINISTRATION
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
SEPTEMBER 10, 1987

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I AM BEFORE YOU TODAY TO ANSWER ANY QUESTIONS YOU MAY HAVE CONCERNING THE AWARD OF CONTRACTS TO DISADVANTAGED SMALL BUSINESS CONCERNS PURSUANT TO THE AUTHORITY OF SECTION 8(a) OF THE SMALL BUSINESS ACT, 15 U.S.C. § 637(a), AND IN PARTICULAR TO THE FORMER 8(a) PARTICIPANT WEDTECH CORPORATION. BEFORE I RESPOND TO THE THREE SPECIFIC QUESTIONS YOU HAVE ASKED REGARDING WEDTECH CORPORATION AND THE 8(a) PROGRAM, I WOULD LIKE TO GIVE A BRIEF DESCRIPTION OF THE 8(a) PROGRAM.

CONGRESS HAS FOUND THAT THE OPPORTUNITY FOR FULL PARTICIPATION IN OUR FREE ENTERPRISE SYSTEM BY SOCIALLY AND ECONOMICALLY

DISADVANTAGED PERSONS IS ESSENTIAL IF WE ARE TO OBTAIN SOCIAL AND ECONOMIC EQUALITY FOR SUCH PERSONS AND IMPROVE THE FUNCTIONING OF OUR NATIONAL ECONOMY. CONGRESS HAS ALSO FOUND THAT THE CONDITIONS FACING SUCH DISADVANTAGED INDIVIDUALS CAN BE IMPROVED BY PROVIDING THE MAXIMUM PRACTICABLE OPPORTUNITY FOR THE DEVELOPMENT OF SMALL BUSINESS CONCERNS OWNED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS. THE 8(a) PROGRAM IS A PROGRAM DESIGNED TO DEVELOP SMALL BUSINESS CONCERNS WHICH ARE OWNED AND CONTROLLED BY INDIVIDUALS FOUND TO BE SOCIALLY AND ECONOMICALLY DISADVANTAGED PRIMARILY BY OFFERING SOLE SOURCE GOVERNMENT PROCUREMENT CONTRACTS TO FIRMS DETERMINED TO BE ELIGIBLE FOR 8(a) PARTICIPATION. AFTER NEGOTIATIONS WITH THE SELECTED 8(a) CONCERN RESULT IN A PRICE TO THE GOVERNMENT WHICH IS DETERMINED TO BE FAIR AND REASONABLE, THE SBA ENTERS INTO A CONTRACT WITH THE PROCURING AGENCY AS THE PRIME CONTRACTOR AND SUBCONTRACTS THE ACTUAL PERFORMANCE OF THE CONTRACT TO THE 8(a) CONCERN.

SELECTED GOVERNMENT PROCUREMENT CONTRACTS ARE OFFERED BY PROCURING AGENCIES TO THE SMALL BUSINESS ADMINISTRATION (SBA) FOR AWARD THROUGH THE 8(a) PROGRAM. IF THE PROCUREMENT HAD PREVIOUSLY BEEN AWARDED TO ANOTHER SMALL BUSINESS THROUGH COMPETITION, THE SBA WILL ACCEPT THE PROCUREMENT FOR AWARD THROUGH THE 8(a) PROGRAM ONLY IF IT IS DETERMINED THAT SUCH ACCEPTANCE WOULD NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON OTHER SMALL BUSINESS PROGRAMS OR INDIVIDUAL SMALL BUSINESS CONCERNS.

THE BASIS FOR THE ADVERSE IMPACT PRINCIPLE IS THE SBA'S MANDATE TO BE AN ADVOCATE FOR THE INTERESTS OF ALL SMALL BUSINESSES.

THERE HAVE BEEN MANY ABUSES IN THE 8(a) PROGRAM SINCE ITS INCEPTION, INCLUDING THE EXISTENCE OF FRONT COMPANIES. THERE HAVE ALSO BEEN MANY ATTEMPTS TO CIRCUMVENT THE INTENT OF THE LAW THROUGH THE USE OF IMAGINATIVE STOCK PLANS. THE SBA HAS TAKEN MANY ACTIONS TO CORRECT AND ELIMINATE THE PROBLEMS AND ABUSES WITH THE PROGRAM. TO THIS END, THE SBA PUBLISHED A NEW SET OF REGULATIONS, EFFECTIVE NOVEMBER 24, 1986, AND RECENTLY INSTITUTED NEW STANDARD OPERATING PROCEDURES, EFFECTIVE APRIL 27, 1987, FOR THE 8(a) AND 7(j) PROGRAMS. THESE REGULATIONS AND OPERATING PROCEDURES WILL ASSIST THE SBA TO MANAGE THE 8(a) AND 7(j) PROGRAMS MORE EFFECTIVELY AND SHOULD ELIMINATE MANY OF THE ABUSES WHICH HAVE OCCURRED IN THESE PROGRAMS IN THE PAST.

I WOULD NOW LIKE TO RESPOND TO YOUR SPECIFIC QUESTIONS.

WEDTECH'S 8(a) ELIGIBILITY IN LIGHT OF ITS PUBLIC STOCK OFFERING AND THE STOCK TRANSACTION ENTERED INTO AMONG ITS OWNERS IN 1983

IT SHOULD FIRST BE NOTED THAT FINAL AUTHORITY FOR DETERMINING WHICH BUSINESS CONCERNS ARE AND ARE NOT ELIGIBLE TO PARTICIPATE IN THE 8(a) PROGRAM IS STATUTORILY VESTED IN SBA'S ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT. THE OFFICE OF THE GENERAL COUNSEL IS PERIODICALLY

ASKED TO COMMENT ON PARTICULAR CASES OF ELIGIBILITY WHICH CONTAIN LEGAL ISSUES.

ON JANUARY 6, 1984, THE THEN SBA CHIEF OF STAFF, ROBERT LHULIER, REQUESTED MY OPINION AS TO THE CONTINUED ELIGIBILITY OF WEDTECH CORPORATION. WEDTECH'S PUBLIC STOCK OFFERING AND THE STOCK TRANSACTION ENTERED INTO AMONG ITS OWNERS NOTED BY THE SUBCOMMITTEE GAVE RISE TO THE NEED FOR THIS OPINION. ON JANUARY 30, 1984, I ISSUED AN OPINION FINDING THAT, AFTER ITS STOCK RESTRUCTURING, WEDTECH CONTINUED TO MEET THE ELIGIBILITY REQUIREMENTS OF THE SMALL BUSINESS ACT AND ITS IMPLEMENTING REGULATIONS. I HAVE ATTACHED A COPY OF THIS OPINION AS APPENDIX 1 TO MY TESTIMONY.

A BRIEF SUMMARY OF THE FACTS PRESENTED TO ME AND UPON WHICH I BASED MY OPINION ARE AS FOLLOWS. IN 1983, WEDTECH HAD MADE AN OFFERING OF 1,900,000 SHARES TO THE PUBLIC IN ORDER TO RAISE NEEDED CAPITAL. AFTER THE SALE, MR. JOHN MARIOTTA, THE DISADVANTAGED INDIVIDUAL UPON WHOM 8(a) PROGRAM ELIGIBILITY WAS ORIGINALLY BASED, NO LONGER OWNED MORE THAN 50% OF THE OUTSTANDING SHARES OF WEDTECH. IN ORDER TO REMAIN ELIGIBLE TO PARTICIPATE IN THE 8(a) PROGRAM, CERTAIN STOCKHOLDERS TRANSFERED FOR VALUE 1,802,062 SHARES OF COMMON STOCK WITH ALL RIGHTS AND BENEFICIAL INTEREST TO MR. MARIOTTA, GIVING MR. MARIOTTA OWNERSHIP OF AT LEAST 55% OF WEDTECH'S OUTSTANDING SHARES. ON THE SAME DATE, THE SHARES PURCHASED BY MR. MARIOTTA WERE TRANSFERRED TO AN ESCROW AGENT AS SECURITY FOR PAYMENT FOR

THE SHARES SO PURCHASED. BECAUSE I WAS LED TO BELIEVE THAT MR. MARIOTTA HAD PURCHASED THE ADDITIONAL 1,802,062 SHARES OF COMMON STOCK AND THAT HE THEN OWNED AND CONTROLLED MORE THAN 51% OF WEDTECH, I FOUND WEDTECH TO BE ELIGIBLE FOR CONTINUED PARTICIPATION IN THE 8(a) PROGRAM. I DO NOT RECALL SEEING ANY UNDERLYING MATERIALS CONTRADICTING THIS POSITION.

IT IS ALSO IMPORTANT TO NOTE THAT THE LAST PARAGRAPH OF THE OPINION CONTAINED A WARNING RECOGNIZING THE POSSIBILITY OF PROGRAM ABUSE BECAUSE "A CRITICAL PERCENTAGE OF MR. MARIOTTA'S STOCK IS SUBJECT TO DEFERRED PAYMENT AND ACCORDINGLY IS HELD IN ESCROW AGAINST THIS PAYMENT," AND ADVISED PROGRAM OFFICALS TO "PERIODICALLY REVIEW THIS ISSUE TO ASSURE THE CONTINUED OWNERSHIP/CONTROL BY THE" INDIVIDUALS DETERMINED TO BE DISADVANTAGED BY THE SBA.

I RELIED UPON MY STAFF TO SCRUTINIZE ANY MATERIALS PRESENTED TO THE OFFICE IN ORDER TO DRAFT AN OPINION FOR MY REVIEW. UPON READING THE OPINION DRAFTED FOR MY REVIEW, I NOTED THAT THE DISTRICT COUNSEL IN SBA'S NEW YORK DISTRICT OFFICE, THE ASSOCIATE REGIONAL ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT, AND THE REGIONAL ADMINISTRATOR HAD ALL CONCLUDED THAT WEDTECH CONTINUED TO MEET THE 8(a) ELIGIBILITY CRITERIA, WITH BOTH THE DISTRICT COUNSEL AND THE REGIONAL ADMINISTRATOR SPECIFICALLY FINDING THAT MR. MARIOTTA SUFFICIENTLY OWNED AND CONTROLLED WEDTECH FOR 8(a) PURPOSES.

IN ADDITION, AT THE TIME OF THE OPINION, I WAS UNDER THE IMPRESSION THAT THE AGENCY HAD PREVIOUSLY PERMITTED, IN CERTAIN CIRCUMSTANCES, 8(a) COMPANIES TO GO PUBLIC. I WAS AWARE THAT THE SMALL BUSINESS ACT SPECIFICALLY CONTEMPLATES PUBLICLY OWNED 8(a) CONCERNS (SEE § 8(a)(4)(ii), 15 U.S.C. § 637(a)(4)(ii)) AND DID NOT, THEREFORE, REACT NEGATIVELY TOWARDS THE CONCEPT OF AN 8(a) CONCERN GOING PUBLIC AS LONG AS DISADVANTAGED INDIVIDUALS CONTINUED TO RETAIN AT LEAST 51% OF THE OWNERSHIP AND CONTROL OF THE BUSINESS AFTER ANY PUBLIC SALE.

GIVEN ALL OF THESE CIRCUMSTANCES, THE OPINION AS PRESENTED FOR SIGNATURE DID NOT CAUSE ANY SPECIAL ALARM AND I PROCEEDED, AS I OFTEN DO, WITH PLACING A HIGH DEGREE OF TRUST IN EXPERIENCED STAFF COUNSEL. HINDSIGHT NOW INDICATES THAT THE ESCROW FEATURE OF THE STOCK TRANSFER SHOULD HAVE BEEN MORE CAREFULLY SCRUTINIZED. HOWEVER, SUCH A CLAIM IS MUCH EASIER TO MAKE THREE YEARS AFTER THE FACT.

SINCE THIS OPINION, AND INDEPENDENT OF THE PUBLICITY SURROUNDING THE WEDTECH SITUATION, THE AGENCY HAS BECOME MORE SENSITIVE TO STOCK OWNERSHIP TRANSACTIONS OF 8(a) COMPANIES. AS A RESULT OF THIS HEIGHTENED SENSITIVITY, THE OFFICE OF GENERAL COUNSEL HAS ISSUED SEVERAL OPINIONS WHICH IMPOSE MORE RESTRICTIONS AND TIGHTER CONTROL ON CHANGES IN OWNERSHIP OF 8(a) CONCERNS. FOR EXAMPLE, I ISSUED AN OPINION WHICH WOULD REQUIRE ANY EXECUTORY CONTRACT OR AGREEMENT ENTERED INTO WHILE A FIRM IS IN THE 8(a) PROGRAM THAT PROVIDES FOR THE TRANSFER

OF EITHER OWNERSHIP OR CONTROL AFTER THE FIRM LEAVES THE 8(a) PROGRAM TO BE GIVEN IMMEDIATE EFFECT. IF BY TREATING SUCH EXECUTORY AGREEMENTS AS EXERCISED THE CONCERN WOULD NO LONGER BE "OWNED" AND "CONTROLLED" BY A DISADVANTAGED INDIVIDUAL(S), THE STOCK OWNERSHIP PLAN WOULD CAUSE THE CONCERN TO LOSE CONTINUED 8(a) ELIGIBILITY. IN ADDITION, WHEREAS IN 1984, THE ONLY AGENCY CONTROL ON STOCK OWNERSHIP BY NONDISADVANTAGED INDIVIDUALS OR THE PUBLIC AT LARGE WAS IN THE AGENCY'S STANDARD OPERATING PROCEDURES, THESE TYPES OF OWNERSHIP ARE NOW RESTRICTED IN PART 124 OF THE AGENCY'S REGULATIONS.

WEDTECH'S ECONOMIC DISADVANTAGED STATUS IN 1984, 1985, and 1986

THE DISADVANTAGED STATUS OF A CONCERN IS DETERMINED WHEN THE CONCERN APPLIES FOR ADMISSION INTO THE 8(a) PROGRAM AND WITH EACH SUBSEQUENT CHANGE IN OWNERSHIP OF THE CONCERN WHILE PARTICIPATING IN THE PROGRAM. AT SUCH TIMES, THE SBA MUST FIND THAT THE CONCERN IS OWNED AND CONTROLLED BY INDIVIDUALS DETERMINED TO BE SOCIALLY AND ECONOMICALLY DISADVANTAGED. IF OWNERSHIP AND CONTROL BY DISADVANTAGED INDIVIDUALS DOES NOT EXIST, AN APPLICANT CONCERN IS DENIED ADMISSION TO THE PROGRAM AND A CONCERN WHICH HAD BEEN PARTICIPATING IN THE PROGRAM LOSES ITS CONTINUED ELIGIBILITY. THE SBA DOES NOT ROUTINELY REEXAMINE THE SOCIAL AND ECONOMIC DISADVANTAGED STATUS OF THE INDIVIDUALS UPON WHOM 8(a) PROGRAM ELIGIBILITY WAS BASED FOR EVERY CONCERN IN THE 8(a) PORTFOLIO DURING THEIR TENURE IN THE PROGRAM.

I HAVE NO PERSONAL KNOWLEDGE OF WEDTECH'S ECONOMIC DISADVANTAGE DURING THE YEARS 1984, 1985, AND 1986. THE OPINION THAT I ISSUED DEALT WITH WHETHER AN INDIVIDUAL WHO HAD BEEN DETERMINED TO BE SOCIALLY AND ECONOMICALLY DISADVANTAGED BY THE REGIONAL OFFICE ACTUALLY OWNED AND CONTROLLED THE COMPANY.

THE ONLY INFORMATION THAT I CAN ADD ON THIS SUBJECT IS THAT THE MERE FACT THAT WEDTECH HAD GONE PUBLIC DOES NOT NECESSARILY LEAD TO THE CONCLUSION THAT IT WAS NO LONGER ECONOMICALLY DISADVANTAGED. AS PREVIOUSLY NOTED, THE SMALL BUSINESS ACT SPECIFICALLY RECOGNIZES THE EXISTENCE OF PUBLICLY HELD COMPANIES PARTICIPATING IN THE 8(a) PROGRAM.

THE ROLE OF POLITICAL PRESSURE IN THE AWARD OF 8(a) CONTRACTS AND OTHER SBA DECISIONS WITH REGARD TO THE 8(a) PROGRAM

AS LONG AS THE 8(a) PROGRAM IS A SOLE SOURCE CONTRACTING PROGRAM WITH THE PORTFOLIO OF POSSIBLE 8(a) CONTRACTORS GREATLY EXCEEDING THE NUMBER OF CONTRACTS AVAILABLE FOR AWARD, IT IS INHERENT THAT MEMBERS OF CONGRESS AND SPECIAL INTEREST GROUPS WILL "INQUIRE" ABOUT CERTAIN PROCUREMENT AWARDS OR THE STATUS OF CERTAIN SMALL BUSINESSES. HOWEVER, I AM NOT AWARE OF ANY 8(a) CONTRACT THAT WAS AWARDED OR ANY FIRM THAT WAS ADMITTED TO THE 8(a) PROGRAM BECAUSE OF POLITICS OR OTHER PRESSURES.

AS THIS QUESTION RELATES TO THE WEDTECH SITUATION, I CAN SAY WITHOUT A DOUBT THAT NO ONE ASKED ME TO GIVE WEDTECH ANY "SPECIAL CONSIDERATION" IN FORMULATING MY OPINION REGARDING

WEDTECH'S CONTINUED 8(a) ELIGIBILITY. THERE WAS NO SUGGESTION MADE TO ME BY AGENCY TOP MANAGEMENT, THE WHITE HOUSE, OR CONGRESS URGING A PARTICULAR RESULT AND I BELIEVE TO THIS DAY THAT THERE WAS NO SUCH URGING IN THIS MATTER.

THE NEW SBA ADMINISTRATOR, JAMES ABDNOR, HAS RECENTLY ADVOCATED COMPETITION IN THE 8(a) PROGRAM. I WHOLEHEARTEDLY SUPPORT THAT POSITION AND BELIEVE THAT IT IS THE ONLY WAY TO ELIMINATE CLAIMS OF FAVORITISM AND BIAS IN THE 8(a) PROGAM. WERE COMPETITION INTRODUCED INTO THE 8(a) PROGRAM, THE SELECTION PROCESS OF A PARTICULAR 8(a) CONCERN WOULD BE BASED SOLELY ON THE CONCERN'S OWN ABILITIES IN COMPETITION.

I WOULD BE PLEASED TO ANSWER ANY QUESTIONS YOU MAY HAVE CONCERNING MY TESTIMONY.

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

JAN 30 1984

Date:

To: Robert Lhulier
Executive Assistant

From: General Counsel

Subject: Eligibility Status -- Wedtech Corp.

Your memorandum of January 6, 1984, requested my opinion as to the current eligibility of Wedtech Corporation for the 8(a) program. This review is based on the eligibility review file submitted by the New York Regional and District Offices.

A brief summary of the facts as presented are that Welbilt Electronics Die Corp., a certified 8(a) firm, filed a Restated Certificate of Incorporation with the State of New York Department of State on June 21, 1983, wherein the name of the company was changed to Wedtech Corp. and authorized the corporation to issue an additional 15,000,000 common shares at one cent par value per share.

Then by a prospectus dated August 25, 1983, an offering of 1,900,000 shares was made to the public. Of the 1,900,000 shares, 1,500,000 were offered by and for the account of Wedtech and 400,000 were offered for the account of selling shareholders. The file does not reflect who bought what number of shares, but there are legal opinions in the file stating that after the sale Mr. John Mariotta, the disadvantaged person upon whom 8(a) program eligibility was originally based, no longer owned the controlling interest nor was the board of directors controlled by disadvantaged persons.

However, a series of agreements with large stockholders (Stock Purchase Agreements I and II) dated December 27, 1983, transferred for value 1,802,062 shares of common stock with all rights and beneficial interest to Mr. Mariotta. These shares added to the 1,558,375 already owned by Mr. Mariotta brought his ownership to 3,360,437 shares which is alleged to be at least 55% of the outstanding shares. Also, on December 27, 1983, the shares purchased by Mr. Mariotta were transferred to an escrow agent as security for payment at a fair market price to be determined at dates the payments are due.

A special meeting of the board of directors was held on November 23, 1983, which increased the membership from four to five and elected Alfred Rivera as the fifth member. The company has submitted SBA Form 1010A, 8(a) Personal Eligibility Statement, on Mr. Rivera and Mr. Morena, as members of the board of directors. It is alleged that the five member board now has three disadvantaged members.

Finally, there are two legal opinions by outside counsel in the file supporting the validity of the transfer of stock and compliance with the Securities Act of 1933, as amended. Also, District Counsel, David Elbaum rendered an opinion dated January 5, 1984, that John Mariotta has "sufficient controlling interest . . . to warrant continuation in the 8(a) program." The ARA/MSB-COD determined by memorandum of January 5, 1984, that "Wedtech Corporation still maintains the standards of eligibility for 8(a) participation and contract support." Also, he recommends a three year FPPT extension. The Regional Administrator's memorandum of January 5, 1984, to the AA/MSB-COD states that his office "finds Wedtech Corporation is owned and controlled by John Mariotta, Mario Morena, and Alfred Rivera who owns 55.3%, 5% and 0%, respectively, of the stock of the corporation and who are members of the five (5) member Board of Directors." Also, he recommends a three year extension of Wedtech Corp. FPPT from its original expiration date of October 11, 1983.

Based on the information and opinions submitted with the file, it is my opinion that Wedtech corporation now meets the standards of 8(a) program eligibility pursuant to Pub. L. 95-507 and implementing regulations. However, in view of the fact that a critical percentage of Mr. Mariotta's stock is subject to deferred payment and accordingly is held in escrow against this payment, the Office of Eligibility should periodically review this issue to assure the continued ownership/control by the SBA certified disadvantaged persons. The AA/MSB/COD should advise the Regional Administrator of the results of these reviews. Also see SOP 80-05 (Sept. 4, 1979), §§ 13(b)(3), 13(d)(3) and 13(d)(4).

Robert B. Webber
General Counsel

SBA
U.S. Small Business Administration Washington, DC 20416

STATEMENT OF JACK MATTHEWS, REGIONAL COUNSEL
REGION II, U. S. SMALL BUSINESS ADMINISTRATION

TO THE
COMMITTEE ON GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT
UNITED STATES SENATE
WASHINGTON, D.C., SEPTEMBER 10, 1987

MR. CHAIRMAN, DISTINGUISHED MEMBERS OF THE COMMITTEE, GOOD MORNING. MY NAME IS JACK MATTHEWS. I AM PRESENTLY EMPLOYED AS THE REGIONAL COUNSEL FOR REGION II OF THE U.S. SMALL BUSINESS ADMINISTRATION. I HAVE BEEN IN THIS POSITION SINCE AUGUST, 1979. REGION II IS COMPRISED OF THE STATES OF NEW YORK, NEW JERSEY, PUERTO RICO AND THE U.S. VIRGIN ISLANDS.

I HAVE BEEN ASKED BY YOUR COMMITTEE TO APPEAR HERE TODAY TO COMMENT ON MY INVOLVEMENT WITH CERTAIN ASPECTS OF THE WEDTECH CORPORATION'S PARTICIPATION IN SBA'S MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT PROGRAM OTHERWISE KNOWN AS THE SECTION 8(A) PROGRAM.

TO BEGIN, I WOULD LIKE TO DESCRIBE BRIEFLY THE FUNCTIONS OF THE REGIONAL COUNSEL'S OFFICE IN NEW YORK AND THE SCOPE OF OUR ACTIVITIES. THE OFFICE, STAFF WISE, CONSISTS OF THE REGIONAL COUNSEL: THE ASSISTANT REGIONAL COUNSEL: AN ATTORNEY-ADVISOR AND A LEGAL TECHNICIAN.

THE REGIONAL COUNSEL SERVES AS THE PRINCIPAL LEGAL ADVISOR TO THE REGIONAL ADMINISTRATOR AND HIS STAFF IN ALL LEGAL ASPECTS OF THE VARIOUS PROGRAMS AND ADMINISTRATIVE OPERATION OF THE REGION. THE REGIONAL COUNSEL ALSO PLANS, DIRECTS, COORDINATES AND EVALUATES THE PROVISION OF LEGAL SERVICES FOR PROGRAM OPERATIONS AT BOTH THE REGIONAL AND DISTRICT LEVELS AND ACTS AS CHIEF LITIGATION OFFICER FOR THE REGION.

SPECIFICALLY, THE COMMITTEE, THROUGH YOUR CHAIRMAN, HAS ASKED ME TO COMMENT ON MY ROLE IN SBA'S DECISIONS ON THE FOLLOWING ISSUES:

1. WEDTECH'S 8(A) ELIGIBILITY IN LIGHT OF THE COMPANY'S PUBLIC STOCK OFFERING AND THE STOCK TRANSACTION ENTERED INTO AMONG ITS OWNERS IN LATE 1983.

2. WEDTECH'S "ECONOMICALLY DISADVANTAGED" STATUS IN 1984, 1985, AND 1986.

3. THE DECISION TO EXTEND WEDTECH'S FIXED PROGRAM PARTICIPATION TERM.

I WOULD LIKE TO DEAL WITH ITEMS 1 AND 3 AT THE SAME TIME SINCE THEY ARE RELATED IN MY MIND AND DISCUSS ITEM 2 AFTERWARDS.

TO ASSIST THE COMMITTEE IN A BETTER UNDERSTANDING OF THE EVENTS, I WOULD LIKE TO POINT OUT THAT THE NEW YORK DISTRICT OFFICE WAS RESPONSIBLE FOR THE DAY-TO-DAY MONITORING OF THE WEDTECH ACTIVITIES IN THE 8(A) PROGRAM AS WEDTECH WAS IN THE NEW YORK DISTRICT'S 8(A) PORTFOLIO. THIS MONITORING ACTIVITY INCLUDED SUCH THINGS AS REVIEWING THE FIRM'S PROGRESS ON ITS BUSINESS PLAN; REVIEWING PERIODIC FINANCIAL STATEMENTS SUBMITTED BY THE FIRM AND MONITORING OWNERSHIP TO ASSURE CONTINUED OWNERSHIP AND CONTROL BY A PERSON OR PERSONS CERTIFIED TO BE SOCIALLY AND ECONOMICALLY DISADVANTAGED. THE NEW YORK DISTRICT OFFICE WOULD ALSO BE RESPONSIBLE FOR RECOMMENDING OR NOT RECOMMENDING AN EXTENSION OF THE FIRM'S FIXED PROGRAM PARTICIPATION TERM.

WHAT I AM TRYING TO ILLUSTRATE IS THAT CERTAIN AUTHORITY WAS VESTED IN THE DISTRICT OFFICE AS OPPOSED TO THE REGIONAL OFFICE AND CERTAIN AUTHORITY WAS RETAINED BY THE CENTRAL OFFICE PURSUANT TO LAW AND AGENCY POLICY.

IN ALL CASES WHEREIN THE AUTHORITY WAS VESTED IN THE CENTRAL OFFICE THE DISTRICT AND REGIONAL OFFICES MADE RECOMMENDATIONS AND FINAL DECISIONS WERE MADE IN THE CENTRAL OFFICE.

THIS WAS THE CASE WITH WEDTECH REGARDING THE FIRM'S REQUEST FOR A FIXED PROGRAM TERM PARTICIPATION EXTENSION AND REGARDING CONTINUED ELIGIBILITY.

I RECALL PARTICIPATING IN A DISCUSSION IN THE REGIONAL ADMINISTRATOR'S OFFICE SOMETIME IN AUGUST OR SEPTEMBER 1983 SUBSEQUENT TO THE TIME I LEARNED THAT WEDTECH HAD GONE PUBLIC. THE ISSUES UNDER DISCUSSION WERE THE CHANGES IN OWNERSHIP AND CONTROL OF WEDTECH, THE PUBLIC OFFERING OF ITS SHARES AND THE RESULTING DIMINUTION OF THE PERCENTAGE OF SHARES OWNED BY THE PERSON OR PERSONS CERTIFIED TO BE SOCIALLY AND ECONOMICALLY DISADVANTAGED, AND ON WHOM WEDTECH'S ELIGIBILITY WAS BASED.

MY FURTHER RECOLLECTION IS THAT WEDTECH'S FIXED PROGRAM PARTICIPATION TERM WAS EXPIRING AND THAT THERE WAS DISCUSSION ABOUT A TEMPORARY EXTENSION TO ALLOW TIME FOR A RESOLUTION OF THE OWNERSHIP AND CONTROL ISSUES AS THEY AFFECTED ITS CONTINUED ELIGIBILITY IN THE 8(A) PROGRAM.

AT THIS POINT IN TIME I DO NOT REMEMBER WHO WERE THE PARTICIPANTS IN THIS DISCUSSION EXCEPT FOR MYSELF AND THE REGIONAL ADMINISTRATOR AND TWO OR THREE OTHER PERSONS.

DURING THE NEXT SEVERAL MONTHS I DID NOT HAVE ANY INVOLVEMENT WITH THE WEDTECH MATTER.

UPON RETURNING FROM A TRIP TO PUERTO RICO ABOUT THE MIDDLE OF FEBRUARY, 1984, I INQUIRED OF MR. AUBREY ROGERS, NOW DEPUTY REGIONAL ADMINISTRATOR OF REGION II, AS TO THE OUTCOME OF THE WEDTECH ELIGIBILITY ISSUE. IN RESPONSE TO MY INQUIRY, MR. ROGERS ADVISED IN GENERAL TERMS OF THE STOCK TRANSFER ARRANGEMENT AND THE EXTENSION OF THE FIRM IN THE 8(A) PROGRAM.

AS TO THE ISSUE OF WEDTECH'S "ECONOMICALLY DISADVANTAGED" STATUS IN 1984, 1985 AND 1986, I HAD NO INVOLVEMENT IN ANY DECISIONS REGARDING WEDTECH'S STATUS. I DO RECALL INFORMAL DISCUSSIONS IN THE OFFICE AND HEARING OF WEDTECH'S ARGUMENT THAT ITS ECONOMIC STATUS SHOULD BE JUDGED ON THE BASIS OF COMPARISON WITH FIRMS ENGAGED IN SIMILAR LINES OF BUSINESS LIKE GENERAL MOTORS OR GENERAL DYNAMICS. FROM WHAT I SAW OF ITS PRESENTATION (OF WEDTECH'S OUTSIDE COUNSEL) I WAS NOT IMPRESSED WITH THEIR ARGUMENTS AND BELIEVE THAT I EXPRESSED SUCH AN UNSOLICITED OPINION, HOWEVER, I WAS NEVER ASKED FOR A FORMAL OPINION IN THIS REGARD.

MR. CHAIRMAN, THIS CONCLUDES MY PREPARED STATEMENT. I WILL BE PLEASED TO ANSWER ANY QUESTIONS YOU MAY HAVE.

SBA U.S. Small Business Administration Washington, DC 20416

STATEMENT OF DAVID ELBAUM, DISTRICT COUNSEL
UNITED STATES SMALL BUSINESS ADMINISTRATION
NEWARK, NEW JERSEY, DISTRICT OFFICE

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT
COMMITTEE ON GOVERMENTAL AFFAIRS
UNITED STATES SENATE
WASHINGTON, D.C., SEPTEMBER 10th, 1987

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

MY NAME IS DAVID ELBAUM AND I AM CURRENTLY THE DISTRICT COUNSEL FOR THE SMALL BUSINESS ADMINISTRATION IN THE NEWARK, NEW JERSEY DISTRICT OFFICE. I HAVE SERVED THE SMALL BUSINESS ADMINISTRATION IN A LEGAL CAPACITY SINCE 1967. FROM NOVEMBER 1974 TO JUNE OF 1986 I SERVED AS DISTRICT COUNSEL OF THE NEW YORK DISTRICT OFFICE. I WAS APPOINTED TO MY PRESENT POSITION ON JUNE 28th 1986.

THE FUNCTION OF THE DISTRICT COUNSEL IS TO BE THE CHIEF LEGAL ADVISOR TO THE DISTRICT DIRECTOR AND TO THE DISTRICT OFFICE PERSONNEL. IT WAS IN MY CAPACITY AS DISTRICT COUNSEL IN THE NEW YORK OFFICE THAT I BECAME ACQUAINTED WITH THE WEDTECH CORPORATION.

MR. CHAIRMAN, YOUR INVITATION DATED AUGUST 13, 1987, REQUESTED MY COMMENTS ON FOUR SEPARATE ISSUES. WITH YOUR PERMISSION, SIR, I WOULD LIKE TO ADDRESS EACH ISSUE SEPARATELY IN THE ORDER THAT THEY APPEARED IN YOUR INVITATION.

(1) "WEDTECH'S 8(a) ELIGIBILITY IN LIGHT OF THE COMPANY'S PUBLIC STOCK OFFERING AND THE STOCK TRANSACTIONS ENTERED INTO AMONG IT OWNERS IN LATE 1983."

WHEN WEDTECH WENT PUBLIC IN 1983 THEIR STOCK DISTRIBUTION WAS SUCH THAT AN ISSUE WAS RAISED REGARDING THE CONTINUED CONTROLLING INTEREST OF ITS PRESIDENT AND THE PERSON UPON WHOM ELIGIBILITY WAS BASED, MR. JOHN MARIOTTA.

IN DECEMBER OF 1983, MR. MARIOTTA ENTERED INTO AGREEMENTS WITH SEVERAL PERSONS WHO WERE HOLDERS OF WEDTECH STOCK WHEREBY THEIR SHARES WERE ASSIGNED AND TRANSFERRED TO MR. MARIOTTA.

ON OR ABOUT JANUARY 4, 1984, I WAS REQUESTED TO REVIEW THESE STOCK PURCHASE AGREEMENTS AND OTHER DOCUMENTS AND TO DETERMINE WHETHER THEY WERE LEGALLY SUFFICIENT TO SUPPORT A FINDING THAT MR. MARIOTTA CONTINUED TO HAVE A CONTROLLING INTEREST IN THE WEDTECH CORPORATION.

ON JANUARY 5, 1984, I ADVISED MR. EDRIC ROSE, ASSISTANT REGIONAL ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT, OF THE FOLLOWING:

> "AFTER REVIEWING ALL OF THE ABOVE, IT IS MY CONSIDERED OPINION THAT ALL OF THE AGREEMENTS ARE VALID, BINDING, AND ENFORCEABLE, AND THAT JOHN MARIOTTA, BY VIRTUE OF HIS OWNERSHIP OF APPROXIMATELY 53% OF ALL OF THE VOTING STOCK, DOES IN FACT HAVE A CONTROLLING INTEREST AT THIS TIME. IT MUST HOWEVER BE NOTED THAT THE STOCK PURCHASE AGREEMENTS REQUIRE PAYMENTS BY THE PURCHASER BEGINNING JANUARY 1986 FOR HIM TO CONTINUE IN CONTROL AFTER THAT DATE."

IT IS MY UNDERSTANDING, MR. CHAIRMAN, THAT ON OR ABOUT JANUARY 23, 1984, THE GENERAL COUNSEL OF THE SMALL BUSINESS ADMINISTRATION AFFIRMED MY OPINION.

(2) "WEDTECH'S ECONOMICALLY DISADVANTAGED STATUS IN 1984, 1985 AND 1986."

BETWEEN 1984 and 1986 I PARTICIPATED IN MANY MEETINGS AND DISCUSSIONS INVOLVING THE QUESTION OF WEDTECHS "ECONOMICALLY DISADVANTAGED" STATUS, AS WELL AS THE ECONOMICALLY DISADVANTAGED STATUS OF WEDTECH'S PRINCIPAL UPON WHOM ELIGIBILITY WAS BASED. SOME OF THESE MEETINGS INVOLVED ONLY DISTRICT PERSONNEL, SOME INVOLVED DISTRICT AND REGIONAL PERSONNEL, AND, IN SOME INSTANCES, REPRESENTATIVES OF THE WEDTECH CORPORATION WERE IN ATTENDANCE. MR. CHAIRMAN, IT IS IMPOSSIBLE FOR ME TO RECALL AND TO RECOUNT TO THIS COMMITTEE THE SUBSTANCE OF ALL OF THESE MEETINGS.

I CAN, HOWEVER, WITH SOME DEGREE OF CERTAINTY RELATE THE FOLLOWING:

ON APRIL 26, 1985, I PARTICIPATED IN A NEW YORK DISTRICT "8(a) REVIEW AND EVALUATION COMMITTEE" MEETING TO DISCUSS A RECOMMENDATION TO TERMINATE THE WEDTECH CORPORATION FROM PARTICIPATION IN THE 8(a) PROGRAM. THE COMMITTEE CONCLUDED

UNANIMOUSLY THAT THE WEDTECH CORPORATION AND THE INDIVIDUAL UPON WHOM ELIGIBILITY WAS BASED HAD OVERCOME THEIR ECONOMIC DISADVANTAGED STATUS AND RECOMMENDED THAT WEDTECH BE NOTIFIED OF SBA'S INTENTION TO TERMINATE WEDTECH FROM THE PROGRAM.

ON MAY 1, 1985, I SENT A LETTER ON BEHALF OF THE NEW YORK DISTRICT DIRECTOR TO WEDTECH WHICH ADVISED THAT:

> "IT IS THE INTENTION OF THIS OFFICE TO RECOMMEND TO THE ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT THAT YOUR FIRM'S PARTICIPATION IN THE 8(a) PROGRAM BE TERMINATED."

THE LETTER PERMITTED WEDTECH 30 DAYS WITHIN WHICH TO RESPOND.

IN A LETTER DATED MAY 14, 1985, WEDTECH REQUESTED A 60 DAY EXTENSION. THIS REQUEST WAS DECLINED BY THE NEW YORK DISTRICT OFFICE ON MAY 16, 1985. THE REASONS FOR THE DECLINATION WAS THAT WEDTECH HAD FAILED TO SET FORTH WITH SPECIFICITY THE REASONS WHY THEY WERE UNABLE TO RESPOND WITHIN THE 30 DAY TIME FRAME.

ON MAY 21, 1985, THE NEW YORK DISTRICT DIRECTOR RECEIVED A LETTER SIGNED BY MARIO MARENO, EXECUTIVE VICE PRESIDENT OF WEDTECH, SETTING FORTH VARIOUS REASONS WHY WEDTECH NEEDED THE 60 DAY EXTENSION. ON MAY 22, 1985, THE NEW YORK DISTRICT DIRECTOR ADVISED THE WEDTECH CORPORATION BY LETTER THEIR REQUEST WAS GRANTED AND THAT A WRITTEN RESPONSE WAS DUE TO SBA BY CLOSE OF BUSINESS ON JULY 22, 1985.

ON JUNE 26, 1985, AFTER HAVING BEEN ADVISED THAT CHANGES WERE MADE IN THE COMPOSITION OF THE WEDTECH BOARD OF DIRECTORS, THE NEW YORK DISTRICT DIRECTOR ADVISED WEDTECH IN A LETTER THAT:

> "IT IS OUR OPINION THAT SAID CHANGES REFLECT CONTROL IN THAT THOSE DIRECTORS UPON WHOM SOCIAL AND ECONOMIC DISADVANTAGED ELIGIBILITY HAS BEEN ESTABLISHED NO LONGER REPRESEN. A MAJORITY OF THE BOARD".

SINCE THIS REPRESENTED AN ADDITIONAL GROUND FOR TERMINATION THE WEDTECH CORPORATION WAS GIVEN 30 DAYS FROM THE RECEIPT OF THE LETTER TO RESPOND.

ON JULY 11, 1985, THE NEW YORK DISTRICT DIRECTOR RECEIVED A LETTER FROM THE LAW FIRM OF BIAGGI AND EHRLICH, SIGNED BY BERNARD G. EHRLICH, WRITTEN ON BEHALF OF WEDTECH, WHEREIN THEY SET FORTH SEVERAL REASONS FOR REQUESTING AN ADDITIONAL 60 DAYS FOR WEDTECH TO RESPOND.

ON JULY 15, 1985, THE NEW YORK DISTRICT DIRECTOR, BECAUSE OF THE ADDITIONAL GROUNDS FOR TERMINATION CONTAINED IN HIS LETTER OF JUNE 26, 1985, GRANTED THE WEDTECH CORPORATION AN EXTENSION UNTIL MONDAY, SEPTEMBER 16, 1985, STATING THAT:

> "IT IS EXPECTED THAT BY SEPTEMBER 16, 1985, THE WEDTECH CORPORATION WOULD HAVE SUFFICIENT TIME WITHIN WHICH TO RESPOND TO BOTH OUR MAY 1st AND JUNE 26th LETTERS".

ACCORDING TO A MEMORANDUM CONTAINED IN THE WEDTECH FILE, ON OR ABOUT SEPTEMBER 18, 1985, THE LAW FIRM OF BIAGGI & EHRLICH SUBMITTED WEDTECH'S MEMORANDUM IN SUPPORT OF IT'S CONTINUED PARTICIPATION IN THE 8(A) PROGRAM. THE MEMORANDUM MADE REFERENCE TO THE CASE OF BDM SERVICE COMPANY VS. SBA.

ON OCTOBER 2, 1985, I PARTICIPATED WITH OTHERS IN AN 8(a) REVIEW AND EVALUATION COMMITTEE MEETING, THE SUBJECT OF WHICH WAS AGAIN THE TERMINATION OF WEDTECH FROM THE 8(a) PROGRAM. ACCORDING TO THE MEMORANDUM, ALL VOTING MEMBERS WITH THE EXCEPTION OF MYSELF, DAVID ELBAUM, AGREED THAT THE BDM CASE WAS SUFFICIENT AUTHORITY FOR THE WEDTECH CORPORATION TO REMAIN IN THE PROGRAM. THE MEMORANDUM INDICATED THAT I ABSTAINED PENDING FURTHER RESEARCH INTO THE BDM CASE.

ACCORDING TO A MEMORANDUM CONTAINED IN THE WEDTECH FILE I PARTICIPATED IN A MEETING ON OCTOBER 23, 1985, AT WHICH TIME I INDICATED THAT I WAS NOT PREPARED SINCE I HAD NOT COMPLETED MY RESEARCH OF THE BDM CASE.

I RECALL BEING CONVINCED THAT IT WAS NOT THE INTENTION OF CONGRESS TO CREATE ANOTHER AT&T, GENERAL MOTORS OR LOCKEED AIRCRAFT THOUGH THE 8(a) PROGRAM. I ALSO RECALL HAVING INFORMALLY REQUESTED THAT THE MSB-COD SECTION IN THE NEW YORK DISTRICT OFFICE PROVIDE ME WITH ALL THE INFORMATION AVAILABLE REGARDING WEDTECH'S ABILITY TO OBTAIN OUTSIDE FINANCING THROUGH BORROWING, PUBLIC OFFERINGS INVOLVING STOCKS & BONDS, AND PRIVATE FINANCING. I DO NOT RECALL EVER HAVING RECEIVED THIS INFORMATION.

SUBSEQUENT TO OCTOBER 23, 1985, IT IS MY RECOLLECTION THAT THERE WERE SEVERAL MEETINGS AND EXCHANGES OF CORRESPONDENCE BETWEEN REPRESENTATIVES OF THE WEDTECH CORPORATION AND SBA PERSONNEL. ALTHOUGH I CANNOT RECOLLECT THE SUBSTANCE OF SPECIFIC MEETINGS THAT I ATTENDED, I DO RECALL THAT THE ISSUES OF ECONOMIC DISADVANTAGED AND CONTROL OF THE COMPANY WERE DISCUSSED.

ON FEBRUARY 13, 1986, AN ARTICLE APPEARED IN THE "WALL STREET JOURNAL" WHICH INDICATED THAT JOHN MARIOTTA WAS NO LONGER THE CHAIRMAN OF THE BOARD AND THAT HE HAD BEEN REPLACED BY MR. FRED NEUBERGER, A NON-DISADVANTAGED STOCKHOLDER.

IN A LETTER DATED MARCH 27, 1986, THE WEDTECH CORPORATION REQUESTED THAT THEY BE CONSIDERED AS HAVING COMPLETED THEIR PARTICIPATION IN THE 8(a) PROGRAM.

ON MARCH 28, 1986, I FORWARDED TO THE WEDTECH CORPORATION, C/O BIAGGI AND EHRLICH, ESQS., SEVERAL AGREEMENTS TO BE EXECUTED BY WEDTECH. IN ADDITION, I REQUESTED OTHER DOCUMENTS THAT WERE REQUIRED TO EFFECTUATE THE FIRM'S REQUEST.

3. "THE DECISION TO EXTEND WEDTECHS FIXED PROGRAM PARTICIPATION TERM."

MR. CHAIRMAN, SEVERAL WEEKS AGO I WAS TELEPHONICALLY INTERVIEWED BY A MEMBER OF THE SUBCOMMITTEE STAFF. AT THAT TIME I INDICATED THAT I HAD NO RECOLLECTION OF EVER HAVING BEEN INVOLVED IN ANY DISCUSSION REGARDING WEDTECH'S FIXED PROGRAM PARTICIPATION TERM. THIS DOES NOT MEAN THAT SUCH DISCUSSION DID NOT TAKE PLACE, BUT I JUST DO NOT RECALL PARTICIPATING IN SUCH DISCUSSIONS.

UPON BEING ADVISED ON AUGUST 26, 1987, THAT AN INVITATION TO TESTIFY WAS BEING FORWARDED TO ME, AND UPON FURTHER BEING ADVISED OF THE ISSUES INVOLVED, I REQUESTED PERMISSION OF REPRESENTATIVES FROM THE UNITED STATES ATTORNEY'S OFFICE, SOUTHERN DISTRICT OF NEW YORK, TO REVIEW SOME OF THE WEDTECH FILES THAT THEY HAD IN THEIR POSSESSION. ON AUGUST 28, 1987, I SPENT OVER FOUR HOURS REVIEWING THEIR FILES BUT I WAS UNABLE TO LOCATE ANY INFORMATION THAT WOULD ENABLE ME TO MAKE ANY SIGNIFICANT COMMENT ON THIS ISSUE. ALTHOUGH I DID FIND INFORMATION WHICH ASSISTED ME IN MY RESPONSE INVOLVING ISSUE #2.

I THEREFORE REGRETFULLY FIND THAT I CANNOT MAKE ANY STATEMENT IN THIS AREA EXCEPT TO ADVISE THE SUBCOMMITTEE THAT BY WAY OF DEFINITION THE FIXED PROGRAM PARTICIPATION TERM AND ANY EXTENSION THEREOF IS "THE ULTIMATE TIME PERIOD DURING WHICH A CONCERN MAY REMAIN IN THE SECTION 8(a) PROGRAM REGARDLESS OF WHETHER COMPETITIVENESS IS REACHED BY THE CONCERN". [13 CFR 124.111(a)]

(4) "THE ROLE OF THE POLITICAL PRESSURE IN THE AWARD OF 8(a) CONTRACTS AND OTHER SBA DECISIONS WITH REGARD TO THE 8(a) PROGRAM."

MR. CHAIRMAN, IT IS MY CONSIDERED OPINION THAT THE PRECEPTION OF THE GENERAL PUBLIC REGARDING "POLITICAL PRESSURE" THAT ALLEGEDLY IS BROUGHT TO BEAR AT THE DISTRICT OFFICE LEVEL OF THE SMALL BUSINESS ADMINISTRATION IS HIGHLY EXAGGRATED. THERE IS NO DOUBT THAT A POLITICAL CONTACT CAN BE UTILIZED TO GAIN ACCESS TO PRIMARY LEVELS WITHIN AN AGENCY'S ORGANIZATIONAL STRUCTURE, AND THERE IS NO DOUBT THAT POLITICAL CONTACTS CAN BE UTILIZED TO EXPEDITE VARIOUS PROCESSES REQUIRED IN THE AWARDING AN 8(a) CONTRACT. I AM NOT AWARE OF ANY CONTRACT BEING AWARDED, OR ANY DECISION BEING MADE IN THE 8(a) PROGRAM OR ANY OTHER SBA PROGRAM WHICH DECISION OR AWARD WAS BROUGHT ABOUT BY POLITICAL PRESSURE WITHIN THE DISTRICT OFFICE.

DURING MY 20 YEAR CAREER WITH SBA I HAVE RESPONDED TO HUNDREDS OF CONGRESSIONAL, WHITE HOUSE AND INTERNAL INQUIRIES FROM SUPERIORS REGARDING HUNDREDS OF ISSUES ON HUNDREDS OF CASES. NEVER ONCE, MR. CHAIRMAN, WAS I ASKED TO COMPROMISE MYSELF BY RENDERING AN OPINION BECAUSE OF POLITICAL PARTY AFFILIATION, POLITICAL CONTACT, OR EVEN PLAIN FRIENDSHIP. IN ALL INSTANCES, MY OPINIONS AND MY ADVICE WERE BASED SOLELY ON THE LAW AND FACTS AS I UNDERSTOOD THEM. I WAS NEVER THREATENED, COERCED OR INTIMIDATED BY ANYONE.

MR. CHAIRMAN, THIS CONCLUDED MY FORMAL STATEMENT. I WILL BE PLEASED TO ANSWER ANY QUESTIONS YOU OR MEMBERS OF THE SUBCOMMITTEE MAY HAVE.

Public Law 95-507
95th Congress

An Act

To amend the Small Business Act and the Small Business Investment Act of 1958.

Oct. 24, 1978
[H.R. 11318]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Small Business Act and Small Business Investment Act of 1958, amendment.

TITLE I—AMENDMENTS TO THE SMALL BUSINESS INVESTMENT ACT OF 1958

Chapter 1

* * * * * * *

Sec. 202. (a) Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) is amended to read as follows:

Procurement contracts.

"Sec. 8. (a)(1) It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary or appropriate—

"(A) to enter into contracts with the United States Government and any department, agency, or officer thereof having procurement powers obligating the Administration to furnish articles, equipment, supplies, services, or materials to the Government or to perform construction work for the Government. In any case in which the Administration certifies to any officer of the Government having procurement powers that the Administration is competent and responsible to perform any specific Government procurement contract to be let by any such officer, such officer shall be authorized in his discretion to let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer. Whenever the Administration and such procurement officer fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator;

"(B) to enter into contracts with such agency, as shall be designated by the President within 60 days after the effective date of this paragraph, to furnish articles, equipment, supplies, services, or materials, or to perform construction work for such agency. In any case in which the Administration certifies to any officer of such agency having procurement powers that the Administration is competent and responsible to perform any specific procurement contract to be let by any such officer, such officer shall let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer. If the Administration and such procurement officer fail to agree on such terms and conditions, either the Administration or such officer shall promptly notify, in writing, the head of such agency. The head of such agency shall have five days (exclusive of Saturdays, Sundays, and legal holidays) to establish the terms and conditions upon which such procurement contract may be let to the Administration, and shall communicate in writing to the Administration the terms and conditions so established. Within five days (exclusive of Saturdays, Sundays, and legal holidays) after the receipt of such written communication, the Administration shall decide whether to perform such procurement contract or withdraw its prior certification that the Administration is competent and responsible to perform such contract; and

"(C) to arrange for the performance of such procurement contracts by negotiating or otherwise letting subcontracts to socially and economically disadvantaged small business concerns for construction work, services, or the manufacture, supply, assembly of such articles, equipment, supplies, materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Administration to perform such contracts.

"No contract may be entered into under subparagraph (B) after September 30, 1980.

Performance bonds.

"(2) Notwithstanding subsections (a) and (c) of the first section of the Act entitled 'An Act requiring contracts for the construction, alteration, and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public work,' approved August 24, 1935 (49 Stat. 793), no small business concern shall be required to provide any amount of any bond as a condition of receiving any subcontract under this subsection if the Administrator determines that such amount is inappropriate for such concern in performing such contract: *Provided*, That the Administrator shall exercise the authority granted by the paragraph only if—

"(A) the Administration takes such measures as it deems appropriate for the protection of persons furnishing materials and labor to a small business receiving any benefit pursuant to this paragraph;

"(B) the Administration assists, insofar as practicable, a small business receiving the benefits of this paragraph to develop, within a reasonable period of time, such financial and other capability as may be needed to obtain such bonds as the Administration may subsequently require for the successful completion of any program conducted under the authority of this subsection;

"(C) the Administration finds that such small business is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue such bond or bonds subject to the guarantee provisions of Title IV of the Small Business Investment Act of 1958; and

"(D) the small business is determined to be a start-up concern and such concern has not been participating in any program conducted under the authority of this subsection for a period exceeding one year.

"This paragraph shall not apply after September 30, 1980.

"(3) Any small business concern selected by the Administration to perform any Federal Government procurement contract to be let pursuant to this subsection shall, when practicable, participate in any negotiation of the terms and conditions of such contract.

"Socially and economically disadvantaged small business concern."

"(4) For purposes of this section, the term 'socially and economically disadvantaged small business concern' means any small business concern—

"(A) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

"(B) whose management and daily business operations are controlled by one or more of such individuals.

Socially disadvantaged individuals.

"(5) Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

Economically disadvantaged individuals.

"(6) Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities the Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individual.

"(7) No small business concern shall be deemed eligible for any assistance pursuant to this subsection unless the Administration determines that with contract, financial, technical, and management support the small business concern will be able to perform contracts which may be awarded to such concern under paragraph (1)(C) and has reasonable prospects for success in competing in the private sector.

Determinations.

"(8) All determinations made pursuant to paragraphs (4), (5), (6) and (7), shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development.

Publication in Federal Register.

"(9) Within ninety days after the effective date of this paragraph, the Administration shall publish in the Federal Register rules setting forth those conditions or circumstances pursuant to which a firm previously deemed eligible by the Administration may be denied assistance under the provisions of this subsection: *Provided*, That no such firm shall be denied total participation in any program conducted under the authority of this subsection without first being afforded a hearing on the record in accordance with chapter 5 of title 5, United States Code.

"(10) The Administration shall develop and implement an outreach program to inform and recruit small business concerns to apply for eligibility for assistance under this subsection.

"(11) To the maximum extent practicable, construction subcontracts awarded by the Administration pursuant to this subsection shall be awarded within the county or State where the work is to be performed.

Annual estimate.

"(12) To the maximum extent practicable the Associate Administrator for Minority Small Business and Capital Ownership Development shall submit, no less frequently than annually, a yearly estimate of the dollar amounts and types of contracts required for the efficient use of any program conducted under the authority of this subsection, to each agency which may participate in such program.".

Report to Congress.
15 USC 637 note.
Ante, p. 1761.

(b) Not later than June 30, 1980, the General Accounting Office shall submit to the Congress a report which, with respect to provisions of paragraphs (1)(B) and (2) of section 8(a) of the Small Business Act, shall evaluate the implementation of such provisions and whether such implementation furthered the purposes under section 2(e) of the Small Business Act.

SCP 80 05

MSB & COD PROGRAMS

(INCLUDES REVISIONS A THROUGH H)

1953

Office of Minority Small Business
and Capital Ownership Development
U.S. Small Business Administration

b. Economic Disadvantage

13 C.F.R. 124.1-1(c)(4) defines economic disadvantage as follows:

"(i) Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area who are not socially disadvantaged.

(ii) In determining the degree of diminished credit and capital opportunities of a socially disadvantaged individual, consideration shall be given:

(A) with respect to both the disadvantaged individual and the applicant concern with which he or she is affiliated, to the following factors, including but not limited to:

(1) Personal and business assets;

(2) Personal and business net worth; and

(3) Personal and business income and profits.

(B) with respect to the applicant concern, the following factors, including but not limited to:

(1) Availability of financing;

(2) Bonding capability;

(3) Availability of outside equity capital; and

(4) Available markets."

(1) In determining the individual's personal financial resources the equity contained in a primary residence shall be included when analyzing SBA Form 413, "Personal Financial Statement."

(2) A comparison shall be made of the 8(a) applicant's business and financial profile with profiles of non-disadvantaged individuals in the same or similar line of business and competitive market area.

(3) In general, it is not the intent of the 8(a) program to allow participation by socially disadvantaged individuals who have accumulated substantial wealth, have unlimited growth potential and have not experienced or have

overcome impediments to obtaining equal access to financing, markets and resources and who can provide for themselves the types of assistance available through the 8(a) program. It is also not the intent of the 8(a) program to exclude participation by socially disadvantaged individuals who, while they may have achieved moderate financial success, still are unable to compete and grow on equal terms in the marketplace because traditional cultural, racial or social barriers are preventing access to usual sources of financing, markets, or other resources.

7. ELIGIBILITY CRITERIA FOR BUSINESS CONCERNS

In order to be eligible to participate in the 8(a) program, an applicant concern must be a small business which is at least 51% owned, controlled and daily managed by an individual or individuals determined to be socially and economically disadvantaged.

a. Small Business Concern

13 C.F.R. 124.1-1(c)(1) states as follows:

"In order to be eligible to participate in the 8(a) program, an applicant concern must qualify as a small business concern as defined for purposes of Government procurement in Section 121.3-8 of the SBA Rules and Regulations. The particular size standard to be applied shall be based on the principal business activity of the applicant concern."

b. Ownership

(1) Corporation

13 C.F.R. 124.1-1(c)(2)(i)(A) states as follows:

"In the case of an applicant concern which is a corporation, 51 percent of all classes of voting stock of such corporation must be owned by an individual(s) determined to be socially and economically disadvantaged."

(2) Partnership

13 C.F.R. 124.1-1(c)(2)(i)(B) states as follows:

"In the case of an applicant concern which is a partnership, 51 percent of the partnership interest must be owned by an individual or individuals determined to be socially and economically disadvantaged..."

(3) Investment Corporations

13 C.F.R. 124.1-1(c)(2)(iii) states as follows:

"State local, and Community Development Corporations, MESBIC's and SBIC's, profit or nonprofit, may own up to 49 percent interest or voting stock in an applicant concern....

In determining the 'ownership and control' of a business, within the meaning of these regulations, the potential ownership interests of state, local and Community Development Corporations, SBIC's and MESBIC's, such as warrants, voting trust interests and other arrangements, shall not be counted until and unless exercised by the subject entity."

(4) Ownership by Non-Disadvantaged Individuals

Part ownership in an 8(a) concern by non-disadvantaged individuals is permitted and may be necessary to insure adequate capital for the concern's development, provided that non-disadvantaged individuals, their spouses or immediate family members may not:

(a) Be former employers of the disadvantaged owners;

(b) Be affiliated or associated with another business operating in the same or similar type of business;

(c) Be stockholders or owners in any other 8(a) concern;

(d) Exercise negative control;

(e) Receive excessive compensation for personal services as directors or employees;

(f) Sell, rent, or donate property, equipment, supplies, services, and/or financial assistance to the concern other than personal services as directors or employees.

(5) Ownership by Concerns in the Same Line of Business

Concerns in the same or similar line of business are prohibited from having any ownership in an 8(a) applicant.

(6) Change of Ownership

Eligibility of 8(a) concerns is based upon the individual eligibility of the persons upon whom eligibility was based and own stock in the applicant concern when it was accepted for program participation. Continued participation of the firm under new ownership is subject to compliance with 8(a) program individual and business eligibility requirements. Program termination procedures shall be initiated where non-compliance exists.

c. Control

13 C.F.R § 124.1(c)(2)(ii) requires that an applicant concern be one,

"Whose management and daily business operations are controlled by an individual(s) determined to be socially and economically disadvantaged. Such individual(s) must be engaged in the daily management and operation of the business concern."

An applicant shall be declined if it is determined that non-disadvantaged individuals as stock holders, officers, directors, or employees in the applicant concern exercise actual control over the operations of the business concern. By way of example, non-disadvantaged individuals may (on a case by case basis) be found to control or have the power to control in any one of the following circumstances:

(1) Non-disadvantaged individuals control the board of[7] directors either directly through majority membership, or indirectly, if the by-laws allow non-disadvantaged individuals to block any action proposed by the disadvantaged individuals through negative control. For example, an equal number of disadvantaged and non-disadvantaged directors could create negative control.

(2) A non-disadvantaged individual, as an officer of the corporation, member of the Board of Directors, or through stock ownership, has the power to control day-to-day direction of the business affairs of the concern.

(3) The non-disadvantaged individual, provides financial or bonding support to the 8(a) concern which indirectly allows the non-disadvantaged individual to gain control or direction of the 8(a) concern.

(4) A non-disadvantaged individual exercises voting control through nominees.

(5) A non-disadvantaged individual controls the corporation or the individual disadvantaged owners through loan arrangements.

(6) Other contractual relationships exist with non-disadvantaged individuals, the terms of which would create control over the disadvantaged concern. Generally the individual(s) upon whom eligibility is based must receive compensation exceeding that of other employees.

105. CRITERIA FOR PROGRAM TERMINATION

Participation of a section 8(a) business concern in the program may be terminated for good cause by the SBA prior to the completion of the concern's business plan. Examples of good cause include, but are not limited to, the following:

a. Failure of the 8(a) concern to continue to meet the standards of eligibility set forth in these regulations.

b. Failure of the 8(a) business concern to maintain its status as a small business concern within the applicable regulations.

c. Failure of the 8(a) concern to maintain ownership and control by the person(s) who was determined to be socially and economically disadvantaged.

d. Inadequate management performance of the 8(a) business concern.

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e. Repeated inadequate performance of awarded 8(a) procurement contracts by the 8(a) business concern.

f. Cessation of business operations by an 8(a) concern.

g. Failure to submit updated business plans within a reasonable time after the due date without approval by SBA.

h. Failure to obtain the prior approval of the AA/MSB&COD of any change in ownership or management control.

i. Noncompliance with substantial requirements of management agreements or joint ventures as approved by the AA/MSB&COD; failure to comply with the reporting provisions required in management agreements; compensating those providing management assistance in excess of that specified in the SBA approved management agreement; having a management agreement either written or oral that has not been approved by the AA/MSB&COD; or willful violation of any of the requirements of the management agreement.

j. Failure or refusal to provide SBA with required quarterly and annual financial statements, reports and other requested data within 90 days after the close of the quarter.

k. Failure to achieve goals cited in the business plan, as modified, as a result of repeated refusal to accept or utilize SBA assistance.

l. Failure to pursue commercial and competitive business in accordance with the business plan projection, or failure to otherwise make reasonable efforts to achieve competitive status.

m. Inability to make satisfactory progress, within a reasonable time, after receiving SBA's management, technical, financial and procurement assistance in achieving its business development objectives.

n. Failure to request or obtain prior written approval from SBA contracting officer before subcontracting under an 8(a) contract.

o. Failure to disclose to SBA the extent to which nondisadvantaged persons or firms will participate in the management of the 8(a) business concern.

p. Failure to disclose to SBA fees paid or to be paid, costs incurred or committed to third parties, directly or indirectly, in the process of obtaining 8(a) contracts or subcontracts.

q. Willful failure to comply with applicable labor standards obligations.

r. The unauthorized use of BDE funds or advance payments.

s. Violation of any substantial requirement or provision of the advance payment agreement.

t. Whenever the concern is debarred by the Comptroller General, the Secretary of Labor or the Director of the Office of Federal Contract Compliance.

u. Whenever the concern is debarred or suspended for cause by any contracting agency pursuant to FPR Subpart 1-1.6 "Debarred Suspended and Ineligible Bidders" or DAR (ASPR) Section I. Part 6, "Debarment, Ineligibility and Suspension".

v. Conviction of the 8(a) concern or a principal(s) for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract.

w. Conviction of the 8(a) concern or a principal(s) under the Organized Crime Control Act of 1970, or conviction of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a Government contractor.

x. Conviction under the Federal Antitrust Statutes arising out of the submission of bids or proposals.

y. Violation of the subcontract provisions against contingent fees and gratuities.

z. Knowingly submitting false information to SBA on behalf of an 8(a) concern by its principals, officers, agents or employees.

* 108.1 FIXED PROGRAM PARTICIPATION TERM EXTENSION

a. GENERAL

Not less than one year prior to the expiration of its Fixed Program Participation Term (FPPT), a concern may request SBA to review and extend its FPPT for a period not to exceed the difference between its original FPPT and seven years. Only one extension may be granted.

b. REGULATORY AUTHORITY

Procedures for the extension of FPPTs are governed by the provisions of 13 C.F.R. 124.1-1(f)(4),(5)(8). Relevant portions of those sections state as follows:

"(4) Not less than one year prior to the expiration of the Fixed Program Participation Term, a concern may request SBA to review and extend its Fixed Program Participation Term for a period not to exceed the difference between the Fixed Program Participation Term established in the business plan and the maximum Fixed Program Participation Term authorized herein, plus two years. There may be no further extensions....

(5) The criteria that SBA will use in negotiating a Fixed Program Participation Term or an extension thereof with current program participants and applicant program participants are as follows:

(i) The factors referenced in § 124.1-1(c)(4) of this regulation for determining economic disadvantage....

(B) In negotiating a Fixed Program Participation Term for concerns currently in the program, SBA will consider the section 8(a) contract support previously received by the concern. An SBA determination that such previous contract support has failed to appreciably contribute toward a timely achievement of competitiveness will be a significant factor toward limiting the Fixed Program Participation Term and the conditions thereof....

(B) In negotiating a Fixed Program Participation Term for concerns currently participating in the program, SBA will consider the non-section 8(a) contract support previously received by the firm. An SBA determination that the concern has failed to progressively increase the importance of such non-section 8(a) contract support during its previous *

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* participation in the program will be a significant factor toward limiting the Fixed Program Participation Term and the conditions thereof.

(B) In negotiating a Fixed Program Participation Term for concerns currently in the program, SBA will consider the length of time during which the concern has previously participated in the program. The degree to which this past participation in the program has exceeded the maximum Fixed Program Participation Terms set forth in paragraph (f)(4) herein, will be a factor toward limiting the Fixed Program Participation Term and the conditions thereof.

(B) In negotiating a Fixed Program Participation Term for concerns currently in the program, SBA will consider the previous Advance Payments and Business Development Expense received by the concern. An SBA determination that such Advance Payments and Business Development Expense support has failed to progressively decrease in importance during its previous participation in the program will be a factor toward limiting the Fixed Program Participation Term and the conditions thereof.

(B) In negotiating a Fixed Program Participation Term for concerns currently in the program, SBA will consider the previous rate at which the concern has decreased its reliance upon program support, and correspondingly increased its reliance upon conventional governmental and private contract business. An SBA determination that the concern has failed to appreciably improve its rate of business reliance in this manner will be a factor toward limiting the Fixed Program Participation Term and the conditions thereof....

(7) Nothing in this paragraph (f) shall be construed to limit SBA from initiating Termination actions, pursuant to subsection (e) above, or Completion actions, pursuant to subsection (d) above, during and Fixed Program Participation Term granted herein.

(8) Upon the conclusion of the Fixed Program Participation Term granted and/or extended herein, a concern will cease to be a program participant. This cessation of program participation shall occur without the necessity of any additional action by SBA; also it shall not give rise to any rights, claims or *

* prerogatives on behalf of the concern. Cessation of program participation at the conclusion of the Fixed Program Participation Term shall not be subject to the hearings or other requirements of section 8(a)(9) of the Small Business Act (15 U.S.C. 637(a)(9) or any implementing rules or regulations."

c. REQUEST FROM FIRM

Any 8(a) concern wishing an extension of its FPPT must make its request in writing by certified mail, return receipt requested, or by registered mail, to the appropriate field office, not less than one year prior to the expiration of the firm's FPPT. The timely submission of any request for extension shall be the sole responsibility of the 8(a) concern.

(1) The request for extension will be date stamped by the mail clerk immediately upon receipt in the field office.

(2) The request shall then be assigned to a BDS who, within five business days of receipt of the request for extension, shall determine whether the request was made in a timely manner.

(a) If the request for extension was mailed less than one year prior to the expiration of the firm's FPPT, the request cannot be processed. The request will be returned to the firm with a letter from the district director advising that the provisions of Public Law 96-481 prohibit the consideration of any request for extension made less than one year prior to the expiration of a firm's FPPT. In no case may this one year requirement be waived.

(b) If the request for extension was made not less than one year prior to the expiration of the firm's FPPT, the BDS shall immediately forward by certified mail, return receipt requested, to the firm complete instructions for providing the documentation necessary to support the firm's request. The BDS shall provide all necessary forms including a revised business plan form as appropriate together with SBA form 413, Personal Financial Statement, for each person upon whom eligibility is based. The firm will be advised to complete all forms and supporting documentation and return the completed material within 30 days along with a persuasive narrative rationale to establish the basis for justifying the requested extension. *

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* For any firm which received an original FPPT of one year, and made a timely request for extension of that FPPT, immediately upon issuance of these procedures, the BDS shall forward to the firm complete instructions for providing the documentation necessary to support the request. The BDS shall then follow the procedures set forth in these instructions for processing the request.

(3) The narrative summary provided by the 8(a) concern shall detail the following:

(a) The firm's progress since the setting of its FPPT;

(b) Areas in which the firm failed to make the progress anticipated when the FPPT was set, if any, and the reasons for such failure. For example: If the firm failed to meet its projected level of non-8(a) contract support, why? Did the firm actively try to procure contracts in the non-8(a) government and private sectors?;

(c) Benefits to be derived from an extension, other than mere increase in contract revenue;

(d) Any extenuating circumstances unique to the firm which cause an extension to be necessary and appropriate. For example:

(i) The concern has suffered extraordinary unforeseen events which have had a temporary adverse impact on the firm's operations.

(ii) The concern is involved in a project intended to realize social-economic objectives such as the Enterprise Zone concept and special initiatives to create jobs in designated areas of chronic unemployment.

(iii) Removal of the firm would have an adverse effect on overall 8(a) program objectives.

(e) Any other facts which the firm believes supports its request;

(f) A statement by the firm that it is in compliance with the terms and conditions of 8(a) program participation as set forth in its Participation Agreement. *

* (4) Upon receipt from the firm, the completed forms will be date stamped by the mail clerk and immediately forwarded to the assigned BDS.

(5) The supporting documentation shall be reviewed for completeness by the assigned BDS within five days of its receipt.

(a) If the information is incomplete, the concern shall be immediately informed in writing. The letter must clearly outline the specific missing or incomplete items and actions which must be taken to overcome the deficiencies. The letter shall advise the firm that it must provide complete or corrected information within five business days of receipt of the letter from SBA.

(b) If the information is complete, the BDS shall continue processing the firm's request for extension.

d. PROCESSING COMPLETE REQUESTS FOR EXTENSION

(1) Requests for extensions shall be processed as follows:

(a) For firms receiving original terms of two years or less:

(i) After screening the request for completeness, the BDS shall immediately complete the appropriate sections of the attached "Evaluation Factors for Fixed Program Participation Term Extension" (Appendixes 51-55) to reflect the firm's condition and projections at the setting of its FPPT and the firm's condition and attained goals at the request for extension. The BDS shall not complete the "Evaluation Factors-Summary," but may make a recommendation regarding the firm's request for extension. The BDS and the ADD/MSB&COD shall forward the request together with any information which they feel may be relevant to the final decision by the AA/MSB&COD to the district director.

(ii) The district director shall forward the request, without further processing, directly to the Regional Administrator who shall forward the request together with any information or comments which he/she feels may be relevant to the final decision to the AA/MSB&COD as expeditiously as possible. *

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* (b) For firms receiving original terms of more than two years:

(i) The district BDS and the ADD/MSB&COD shall process the request in accordance with the procedures outlined below, and shall forward the request together with their evaluation and recommendation to the district director.

(ii) The district director shall review the recommendation and supporting documentation, and shall forward the request and his/her recommendation through channels to the regional administrator.

(iii) The regional administrator shall review the recommendation and the supporting documentation, and shall forward his/her recommendation to the AA/MSB&COD.

(2) In those cases where a BDS analysis is required, the BDS shall conduct the analysis of the business plan and supporting documentation in accordance with the criteria for determining extensions of FPPT's using the attached "Evaluation Factors for Fixed Program Participation Term Extension" (Appendixes 51-55). A recommendation for the extension of a firm's FPPT can be made under the following circumstances:

(a) The firm, through no fault of its own, has failed to make the progress anticipated at the time its FPPT was set.

(b) The firm has demonstrated compelling extenuating circumstances, or other facts to warrant an extension of its FPPT.

(c) An error was made by SBA in the fixing of the original FPPT.

(3) Evaluation of a firm's request for an extension of its FPPT will be based in part on a comparison of the firm's economic position and projected goals as of the date of the setting of the FPPT with the firm's economic position and attained goals as of the date of the request for extension. *

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* (a) Economic Disadvantage Factor;
Significant improvement in personal and business assets, personal and business net worth and business profits is an indicator that the firm has progressed during its FPPT tenure in the 8(a) program. Similarly, greater accessibility to capital and credit, bonding and the competitive market all indicate that the firm has benefited from its program participation. Under most circumstances, a firm that has enjoyed increases in most categories and few or no decreases, would not qualify for an extension of its FPPT based on the economic disadvantage factor alone, unless such increases reflect an economic position which is significantly lower than the projected goals.

(b) All Other Factors;
Levels of support through the 8(a) Program—8(a) contracts, advance payments and business development expense— and non-8(a) support, and the percentages of decrease or increase in reliance on such support were projected over the entire period of the firm's FPPT. Therefore, firms which have exceeded or met the projected levels of support and projected percentage of decrease (increase) in reliance on the support have more than realized the benefits anticipated at the time the firm's FPPT was set. If the firm has nearly attained its projections, the evaluator must examine the last year of the projections to determine whether the firm's final year of the program participation would allow full realization of its goals. If so, an extension of the FPPT would not be warranted. If a firm has fallen far short of its goals, the evaluator must examine SBA's efforts to provide support to the firm. In the case of 8(a) contract support, if, despite the agency's best efforts, contract support could not be provided, an extension may be warranted. With regard to non-8(a) support, if the firm has fallen significantly short of its projections, the evaluator must look to the cause of such failure and rely on information provided by the firm to justify its inability to procure non-8(a) contracts. An extension of the firm's FPPT may be warranted if the firm, through no fault of its own, has failed to attain its non-8(a) contract support goals, and if an extension would serve to allow the firm ample time to realize these goals. *

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* (4) The BDS shall evaluate the firm in accordance with the evaluation factors, and shall add to his/her evaluation a discussion of any extenuating circumstances presented by the firm. Based on that evaluation, the BDS shall recommend:

(a) Approval of the FPPT extension requested by the firm;

(b) Approval of an FPPT extension less than that requested by the firm;

(c) Decline of the firm's request for extension.

(5) In no case may the total recommended extension result in a firm's FPPT plus extension exceeding seven years;

Original FPPT	Maximum Extension
1 year	6 years
2 years	5 years
3 years	4 years
4 years	3 years
5 years	2 years

Despite these allowable maximums, it is not anticipated that a firm granted an original FPPT of less than three years would subsequently be granted the maximum extension.

(6) The AA/MSB&COD shall have final authority to approve the firm's request for extension, approve an extension less than that requested or deny any extension.

(7) The firm shall be advised in writing by certified mail, return receipt requested, by the AA/MSB&COD of the agency's final decision.

(8) Notwithstanding the approval of an extension, SBA may initiate termination actions in accordance with the provisions of the Code of Federal Regulations, 13 C.F.R. 124.1-1(e).

(9) At the conclusion of the firm's FPPT plus extension, if any, the concern will cease to be a program participant. *

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* Cessation of program participation shall not be subject to the hearings or other requirements of Section 8(a)9 of the Small Business Act, 15 U.S.C. 637(a)(9) or any implementing rules or regulations. *

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§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

PRELIMINARY NOTE

Rule 144 is designed to implement the fundamental purposes of the Act, as expressed in its preamble, "To provide full and fair disclosure of the character of the securities sold in interstate commerce and through the mails, and to prevent fraud in the sale thereof * * *" The rule is designed to prohibit the creation of public markets in securities of issuers concerning which adequate current information is not available to the public. At the same time, where adequate current information concerning the issuer is available to the public, the rule permits the public sale in ordinary trading transactions of limited amounts of securities owned by persons controlling, controlled by or under common control with the issuer and by persons who have acquired restricted securities of the issuer.

Certain basic principles are essential to an understanding of the requirement of registration in the Act:

1. If any person utilizes the jurisdictional means to sell any nonexempt security to any other person, the security must be registered unless a statutory exemption can be found for the transaction.

2. In addition to the exemptions found in section 3, four exemptions applicable to transactions in securities are contained in section 4. Three of these section 4 exemptions are clearly not available to anyone acting as an "underwriter" of securities. (The fourth, found in section 4(4), is available only to those who act as brokers under certain limited circumstances.) An understanding of the term "underwriter" is therefore important to anyone who wishes to determine whether or not an exemption from registration is available for his sale of securities.

The term underwriter is broadly defined in section 2(11) of the Act to mean any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates, or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking. The interpretation of this definition has traditionally focused on the words "with a view to" in the phrase "purchased from an issuer with a view to * * * distribution." Thus, an investment banking firm which arranges with an issuer for the public sale of its securities is clearly an "underwriter" under that section. Individual investors who are not professionals in the securities business may also be "underwriters" within the meaning of that term as used in the Act if they act as links in a chain of transactions through which securities move from an issuer to the public. Since it is difficult to ascertain the mental state of the purchaser at the time of his acquisition, subsequent acts and circumstances have been considered to determine whether such person took with a view to distribution at the time of his acquisition. Emphasis has been placed on factors such as the length of time the person has held the securities and whether there has been an unforeseeable change in circumstances of the holder. Experience has shown, however, that reliance upon such factors as the above has not assured adequate protection of investors through the maintenance of informed trading markets and has led to uncertainty in the application of the registration provisions of the Act.

It should be noted that the statutory language of section 2(11) is in the disjunctive. Thus, it is insufficient to conclude that a person is not an underwriter solely because he did not purchase securities from an issuer with a view to their distribution. It must also be established that the person is not offering or selling for an issuer in connection with the distribution of the securities, does not participate or have a direct or indirect participation in any such undertaking, and does not participate or have a participation in the direct or indirect underwriting of such an undertaking.

In determining when a person is deemed not to be engaged in a distribution several factors must be considered.

First, the purpose and underlying policy of the Act to protect investors requires that there be adequate current information concerning the issuer, whether the resales of securities by persons result in a distribution or are effected in trading transactions. Accordingly, the availability of the rule is conditioned on the existence of adequate current public information.

Secondly, a holding period prior to resale is essential, among other reasons, to assure that those persons who buy under a claim of a section 4(2) exemption have assumed the economic risks of investment, and therefore are not acting as conduits for sale to the public of unregistered securities, directly or indirectly, on behalf of an issuer. It should be noted that there is nothing in section 2(11) which places a time limit on a person's status as an underwriter. The public has the same need for protection afforded by registration whether the securities are distributed shortly after their purchase or after a considerable length of time.

A third factor, which must be considered in determining what is deemed not to constitute a "distribution", is the impact of the particular transaction or transactions on the trading markets. Section 4(1) was intended to exempt only routine trading transactions between individual investors with respect to securities already issued and not to exempt distributions by issuers or acts of other individuals who engage in steps necessary to such distributions. Therefore, a person reselling securities under section 4(1) of the Act must sell the securities in such limited quantities and in such a manner as not to disrupt the trading markets. The larger the amount of securities involved, the more likely it is that such resales may involve methods of offering and amounts of compensation usually associated with a distribution rather than routine trading transactions. Thus, solicitation of buy orders or the payment of extra compensation are not permitted by the rule.

In summary, if the sale in question is made in accordance with all of the provisions of the section as set forth below, any person who sells restricted securities shall be deemed not to be engaged in a distribution of such securities and therefore not an underwriter thereof. The rule also provides that any person who sells restricted or other securities on behalf of a person in a control relationship with the issuer shall be deemed not to be engaged in a distribution of such securities and therefore not to be an underwriter thereof, if the sale is made in accordance with all the conditions of the section.

(a) *Definitions.* The following definitions shall apply for the purposes of this section.

(1) An "affiliate" of an issuer is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such issuer.

(2) The term "person" when used with reference to a person for whose account securities are to be sold in reliance upon this section includes, in addition to such person, all of the following persons:

(i) Any relative or spouse of such person, or any relative of such spouse, any one of whom has the same home as such person;

(ii) Any trust or estate in which such person or any of the persons specified in paragraph (a)(2)(i) of this section collectively own 10 percent or more of the total beneficial interest or of which any of such persons serve as trustee, executor or in any similar capacity; and

(iii) Any corporation or other organization (other than the issuer) in which such person or any of the persons specified in paragraph (a)(2)(i) of this section are the beneficial owners collectively of 10 percent or more of any class of equity securities or 10 percent or more of the equity interest.

(3) The term "restricted securities" means securities that are acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering, or securities acquired from the issuer that are subject to the resale limitations of Regulation D under the Act, or securities that are subject to the resale limitations of Regulation D and are acquired in a transaction or chain of transactions not involving any public offering.

(b) *Conditions to be met.* Any affiliate or other person who sells restricted securities of an issuer for his own account, or any person who sells restricted or any other securities for the account of an affiliate of the issuer of such securities, shall be deemed not to be engaged in a distribution of such securities and therefore not to be an underwriter thereof within the meaning of section 2(11) of the Act if all of the conditions of this section are met.

(c) *Current public information.* There shall be available adequate current public information with respect to the issuer of the securities. Such information shall be deemed to be available only if either of the following conditions is met:

(1) *Filing of reports.* The issuer has securities registered pursuant to section 12 of the Securities Exchange Act of 1934, has been subject to the reporting requirements of section 13 of that Act for a period of at least 90 days immediately preceding the sale of the securities and has filed all the reports required to be filed thereunder during the 12 months preceding such sale (or for such shorter period that the issuer was required to file such reports); or has securities registered pursuant to the Securities Act of 1933, has been subject to the reporting requirements of section 15(d) of the Securities Exchange Act of 1934 for a period of at least 90 days immediately preceding the sale of the securities and has filed all the reports required to be filed thereunder during the 12 months preceding such sale (or for such shorter period that the issuer was required to file such reports). The person for whose account the securities are to be sold shall be entitled to rely upon a statement in whichever is the most recent report, quarterly or annual, required to be filed and filed by the issuer that such issuer has filed all reports required to be filed by section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the issuer was required to file such reports) and has been subject to such filing requirements for the past 90 days, unless he knows or has reason to believe that the issuer has not complied with such requirements. Such person shall also be entitled to rely upon a written statement from the issuer that it has complied with such reporting requirements unless he knows or has reasons to believe that the issuer has not complied with such requirements.

(2) *Other public information.* If the issuer is not subject to section 13 or 15(d) of the Securities Exchange Act of 1934, there is publicly available the information concerning the issuer specified in subdivision (i) to (xiv), inclusive, and subdivision (xvi) of paragraph (a)(4) of § 240.15c2-11 of this chapter or, if the issuer is an insurance company, the information specified in section 12(g)(2)(G)(i) of that Act.

(d) *Holding period for restricted securities.* If the securities sold are restricted securities, the following provisions apply:

(1) *General rule.* The person for whose account the securities are sold

shall have been the beneficial owner of the securities for a period of at least 2 years prior to the sale and, if the securities were purchased, the full purchase price or other consideration shall have been paid or given at least 2 years prior to the sale.

(2) *Promissory notes, other obligations or installment contracts.* Giving the person from whom the securities were purchased a promissory note or other obligation to pay the purchase price, or entering into an installment purchase contract with such person, shall not be deemed full payment of the purchase price unless the promissory note, obligation or contract:

(i) Provides for full recourse against the purchaser of the securities;

(ii) Is secured by collateral, other than the securities purchased, having a fair market value at least equal to the purchase price of the securities purchased; and

(iii) Shall have been discharged by payment in full prior to the sale of the securities.

(3) *Short sales, puts or other options to sell securities.* In computing the 2-year holding period the following periods shall be excluded:

(i) If the securities sold are equity securities, there shall be excluded any period during which the person for whose account they are sold had a short position in, or any put or other option to dispose of, any equity securities of the same class or any securities convertible into securities of such class; and

(ii) If the securities sold are nonconvertible debt securities, there shall be excluded any period during which the person for whose account they are sold had a short position in, or any put or other option to dispose of, any nonconvertible debt securities of the same issuer.

(4) *Determination of holding period.* The following provisions shall apply for the purpose of determining the period securities have been held:

(i) *Stock dividends, splits and recapitalizations.* Securities acquired from the issuer as a dividend or pursuant to a stock split, reverse split or recapitalization shall be deemed to have been acquired at the same time as the securities on which the dividend or, if more than one, the initial dividend was paid, the securities involved in the split or reverse split, or the securities surrendered in connection with the recapitalization;

(ii) *Conversions.* If the securities sold were acquired from the issuer for a consideration consisting solely of other securities of the same issuer surrendered for conversion, the securities so acquired shall be deemed to have been acquired at the same time as the securities surrendered for conversion;

(iii) *Contingent issuance of securities.* Securities acquired as a contingent payment of the purchase price of an equity interest in a business, or the assets of a business, sold to the issuer or an affiliate of the issuer shall be deemed to have been acquired at the time of such sale if the issuer or affiliate was then committed to issue the securities subject only to conditions other than the payment of further consideration for such securities. An agreement entered into in connection with any such purchase to remain in the employment of, or not to compete with, the issuer or affiliate or the rendering of services pursuant to such agreement shall not be deemed to be the payment of further consideration for such securities.

(iv) *Pledged securities.* Securities which are bona fide pledged by any person other than the issuer when sold by the pledgee, or by a purchaser, after a default in the obligation secured by the pledge, shall be deemed to have been acquired when they were acquired by the pledgor, except that if the securities were pledged without recourse they shall be deemed to have been acquired by the pledgee at the time of the pledge or by the purchaser at the time of purchase.

NOTE: Securities sold by the pledgee shall be aggregated with those sold by the pledgor, as provided in paragraph (e)(3)(ii) of this section.

(v) *Gifts of securities.* Securities acquired from any person, other than the issuer, by gift shall be deemed to have been acquired by the donee when they were acquired by the donor;

NOTE: Securities sold by the donee shall be aggregated with those sold by the donor, as provided in paragraph (e)(3)(iii) of this section.

(vi) *Trusts.* Securities acquired from the settlor of a trust by the trust or acquired from the trust by the beneficiaries thereof shall be deemed to have been acquired when they were acquired by the settlor;

NOTE: Securities sold by the trust shall be aggregated with those sold by the settlor of the trust, as provided in paragraph (e)(3)(iv) of this section.

(vii) *Estates.* Securities held by the estate of a deceased person or acquired from such an estate by the beneficiaries thereof shall be deemed to have been acquired when they were acquired by the deceased person, except that no holding period is required if the estate is not an affiliate of the issuer or if the securities are sold by a beneficiary of the estate who is not such an affiliate.

NOTES: (a) Securities sold by the estate shall be aggregated with those sold by the deceased person, as provided in paragraph (e)(3)(v) of this section, if the estate is an affiliate of the issuer.

(b) While there is no holding period or amount limitation for estates and beneficiaries thereof which are not affiliates of the insurer, paragraphs (c), (f), (g), (h), and (i) of the section apply to securities sold by such persons in reliance upon the section.

(e) *Limitation on amount of securities sold.* Except as hereinafter provided, the amount of securities which may be sold in reliance upon this rule shall be determined as follows:

(1) *Sales by affiliates.* If restricted or other securities are sold for the account of an affiliate of the issuer, the amount of securities sold, together with all sales of restricted and other securities of the same class for the account of such person within the preceding three months, shall not exceed the greater of

(i) One percent of the shares or other units of the class outstanding as shown by the most recent report or statement published by the issuer, or

(ii) The average weekly reported volume of trading in such securities on all national securities exchanges and/or reported through the automated quotation system of a registered securities association during the four calendar weeks preceding the filing of notice required by paragraph (h), or if no such notice is required the date of receipt of the order to execute the transaction by the broker or the date of execution of the transaction directly with a market maker, or

(iii) The average weekly volume of trading in such securities reported through the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Securities Exchange Act of 1934 (§ 240.11A3-1) during the four-week period specified in paragraph (e)(1)(ii) of this section.

(2) *Sales by persons other than affiliates.* The amount of restricted securities sold for the account of any person other than an affiliate of the issuer, together with all other sales of restricted securities of the same class for the account of such person within the preceding three months, shall not exceed the amount specified in paragraphs (e)(1) (i), (ii) or (iii) of this section, whichever is applicable, unless the conditions of paragraph (k) of this rule are satisfied.

(3) *Determination of amount.* For the purpose of determining the amount of securities specified in paragraphs (e) (1) and (2) of this section, the following provisions shall apply:

(i) Where both convertible securities and securities of the class into which they are convertible are sold, the amount of convertible securities sold shall be deemed to be the amount of securities of the class into which they are convertible for the purpose of determining the aggregate amount of securities of both classes sold;

(ii) The amount of securities sold for the account of a pledgee thereof, or for the account of a purchaser of the pledged securities, during any period of 3 months within 2 years after a default in the obligation secured by the pledge, and the amount of securities sold during the same 3-month period for the account of the pledgor shall not exceed, in the aggregate, the amount specified in paragraph (e) (1) or (2) of this section, whichever is applicable.

(iii) The amount of securities sold for the account of a donee thereof during any period of 3 months within 2 years after the donation, and the amount of securities sold during the

same 3-month period for the account of the donor, shall not exceed, in the aggregate, the amount specified in paragraph (e) (1) or (2) of this section, whichever is applicable;

(iv) Where securities were acquired by a trust from the settlor of the trust, the amount of such securities sold for the account of the trust during any period of 3 months within 2 years after the acquisition of the securities by the trust, and the amount of securities sold during the same 3-month period for the account of the settlor, shall not exceed, in the aggregate, the amount specified in paragraph (e) (1) or (2) of this section, whichever is applicable;

(v) The amount of securities sold for the account of the estate of a deceased person, or for the account of a beneficiary of such estate, during any period of 3 months and the amount of securities sold during the same period for the account of the deceased person prior to his death shall not exceed, in the aggregate, the amount specified in paragraph (e) (1) or (2) of this section, whichever is applicable: *Provided*, That no limitation on amount shall apply if the estate or beneficiary thereof is not an affiliate of the issuer;

(vi) When two or more affiliates or other persons agree to act in concert for the purpose of selling securities of an issuer, all securities of the same class sold for the account of all such persons during any period of 3 months shall be aggregated for the purpose of determining the limitation on the amount of securities sold;

(vii) Securities sold pursuant to an effective registration statement under the Act or pursuant to an exemption provided by Regulation A under the Act or in a transaction exempt pursuant to section 4 of the Act and not involving any public offering need not be included in determining the amount of securities sold in reliance upon this rule.

(f) *Manner of sale.* The securities shall be sold in "brokers' transactions" within the meaning of section 4(4) of the Act or in transactions directly with a "market maker," as that term is defined in section 3(a)(38) of the Securities Exchange Act of 1934, and the person selling the securities shall not (1) solicit or arrange for the solicitation of orders to buy the securities in anticipation of or in connection with such transaction, or (2) make any payment in connection with the offer or sale of the securities to any person other than the broker who executes an order to sell the securities. The requirements of this paragraph, however, shall not apply to securities sold for the account of the estate of a deceased person or for the account of a beneficiary of such estate provided the estate or beneficiary thereof is not an affiliate of the issuer; nor shall they apply to securities sold for the account of any person other than an affiliate of the issuer provided the conditions of paragraph (k) of this rule are satisfied.

(g) *Brokers' transactions.* The term "brokers' transactions" in section 4(4) of the Act shall for the purposes of this rule be deemed to include transactions by a broker in which such broker:

(1) Does not more than execute the order or orders to sell the securities as agent for the person for whose account the securities are sold; and receives no more than the usual and customary broker's commission;

(2) Neither solicits nor arranges for the solicitation of customers' orders to buy the securities in anticipation of or in connection with the transaction; provided, that the foregoing shall not preclude (i) inquiries by the broker of other brokers or dealers who have indicated an interest in the securities within the preceding 60 days, (ii) inquiries by the broker of his customers who have indicated an unsolicited bona fide interest in the securities within the preceding 10 business days; or (iii) the publication by the broker of bid and ask quotations for the security in an inter-dealer quotation system provided that such quotations are incident to the maintenance of a bona fide inter-dealer market for the security for the broker's own account and that the broker has published bona fide bid and ask quotations for the security in an inter-dealer quotation system on each of at least twelve days within the preceding thirty calendar days with no more than four busi-

ness days in succession without such two-way quotations;

NOTE TO PARAGRAPH (g)(2)(ii): The broker should obtain and retain in his files written evidence of indications of bona fide unsolicited interest by his customers in the securities at the time such indications are received.

(3) After reasonable inquiry is not aware of circumstances indicating that the person for whose account the securities are sold is an underwriter with respect to the securities or that the transaction is a part of a distribution of securities of the issuer. Without limiting the foregoing, the broker shall be deemed to be aware of any facts or statements contained in the notice required by paragraph (h) of this section.

NOTES: (i) The broker, for his own protection, should obtain and retain in his files a copy of the notice required by paragraph (h) of this section.

(ii) The reasonable inquiry required by paragraph (g)(3) of this section should include, but not necessarily be limited to, inquiry as to the following matters:

(*a*) The length of time the securities have been held by the person for whose account they are to be sold. If practicable, the inquiry should include physical inspection of the securities;

(*b*) The nature of the transaction in which the securities were acquired by such person;

(*c*) The amount of securities of the same class sold during the past 3 months by all persons whose sales are required to be taken into consideration pursuant to paragraph (e) of this section;

(*d*) Whether such person intends to sell additional securities of the same class through any other means;

(*e*) Whether such person has solicited or made any arrangement for the solicitation of buy orders in connection with the proposed sale of securities;

(*f*) Whether such person has made any payment to any other person in connection with the proposed sale of the securities; and

(*g*) The number of shares or other units of the class outstanding, or the relevant trading volume.

(h) *Notice of proposed sale.* If the amount of securities to be sold in reliance upon the rule during any period of three months exceeds 500 shares or other units or has an aggregate sale price in excess of $10,000, three copies of a notice on Form 144 shall be filed with the Commission at its principal office in Washington, D.C.; and if such securities are admitted to trading on any national securities exchange, one copy of such notice shall also be transmitted to the principal exchange on which such securities are so admitted. The Form 144 shall be signed by the person for whose account the securities are to be sold and shall be transmitted for filing concurrently with either the placing with a broker of an order to execute a sale of securities in reliance upon this rule or the execution directly with a market maker of such a sale. Neither the filing of such notice nor the failure of the Commission to comment thereon shall be deemed to preclude the Commission from taking any action it deems necessary or appropriate with respect to the sale of the securities referred to in such notice. The requirements of this paragraph, however, shall not apply to securities sold for the account of any person other than an affiliate of the issuer, provided the conditions of paragraph (k) of this rule are satisfied.

(i) *Bona fide intention to sell.* The person filing the notice required by paragraph (h) of this section shall have a bona fide intention to sell the securities referred to therein within a reasonable time after the filing of such notice.

(j) *Non-exclusive rule.* Although this rule provides a means for reselling restricted securities and securities held by affiliates without registration, it is not the exclusive means for reselling such securities in that manner. Therefore, it does not eliminate or otherwise affect the availability of any exemption for resales under the Securities Act that a person or entity may be able to rely upon.

(k) *Termination of certain restrictions on sales of restricted securities by persons other than affiliates.* The requirements of paragraphs (c), (e), (f) and (h) of this rule shall not apply to restricted securities sold for the account of a person who is not an affiliate of the issuer at the time of the sale and has not been an affiliate during the proceeding three months, provided the securities have been beneficially owned by such person for a period of at least three years prior to their sale. In computing the period for which securities have been beneficially owned

for purposes of this provision, reference should be made to paragraph (d) of this section.

(Secs. 2(11), 4(1), 4(4), 19(a), 19(c), 48 Stat. 74, 75, 77, 85; secs. 201, 203, 209, 210, 48 Stat. 904, 906, 908; secs. 1-4, 6, 68 Stat. 683, 684; sec. 12, 78 Stat. 580, 84 Stat. 1480; sec. 308(a)(2), 90 Stat. 58 (15 U.S.C. 77b(11), 77d(1), 77d(4), 77s(a); sec. 209, 59 Stat. 167; sec. 3(b), 48 Stat. 75; sec. 308(a) (1), (2), (3), 90 Stat. 56, 57; secs. 2, 18, 92 Stat. 275, 962; secs. 505, 622, 701, 94 Stat. 2291, 2292, 2294 (15 U.S.C. 77c(b), 77d(1), 77s(a), 77s(c)); secs. 2(11), 4(1), 4(4), 19(a), 48 Stat. 74, 77, 85; secs. 201, 203, 209, 210, 48 Stat. 904, 906, 908; secs. 14, 5, 68 Stat. 683, 684; sec. 12, 78 Stat. 580 (15 U.S.C. 77b(11), 77d(1), 77d(4), 77s(a)))

[37 FR 596, Jan. 14, 1972, as amended at 39 FR 6071, Feb. 19, 1974; 39 FR 8914, Mar. 7, 1974; 43 FR 43711, Sept. 27, 1978; 43 FR 54230, Nov. 21, 1978; 44 FR 15612, Mar. 14, 1979; 45 FR 12391, Feo. 28, 1980; 46 FR 12197, Feb. 12, 1981; 47 FR 11261, Mar. 16, 1982; 48 Stat 44771, Sept. 30 1983]

Key SBA Dates on Wedtech Eligibility

September 27, 1982	Wedtech is awarded $30 million Army engine contract
August 25, 1983	Wedtech raises $28 million with 1st public stock offering; Mariotta loses ownership and control
September 14, 1983	SBA N.Y. District Office recommends Wedtech's 8(a) termination
September 22, 1983	SBA issues "bridge letter" giving Wedtech a temporary 8(a) extension
October 12, 1983	Wedtech's 8(a) term set to expire, if no extension
January 4, 1984	Wedtech submits 25-document package in support of so-called "sale" of stock to SBA for approval
	SBA N.Y. District Director finds Wedtech eligible for 8(a)
January 5, 1984	SBA N.Y. District Counsel finds Wedtech eligible for 8(a)
	SBA N.Y. Regional 8(a) Director finds Wedtech eligible for 8(a)
January 25, 1984	SBA headquarters approves 3-year 8(a) extension for Wedtech
	Wedtech is named SBA's candidate for Navy's $134 million pontoon contract
April 17, 1984	Wedtech is awarded the pontoon contract
June 22, 1984	Wedtech raises $40 million with second public stock offering

PAYMENTS TO SELECTED FORMER WEDTECH INSIDERS AND CONSULTANTS (1982-86)
(Based on Best Estimates Available)

NAME	CASH PAYMENTS	STOCK SALE PROCEEDS	TOTAL
Officers			
John Mariotta	2,794,570	$9,231,110	$12,025,680
Fred Neuberger	1,747,747	8,517,363	10,265,110
Mario Moreno	1,384,307	4,687,774	6,072,081
Anthony Guariglia	1,082,589	1,040,573	2,123,162
Lawrence Shorten	924,811	917,683	1,842,494
Richard Bluestine	238,791		238,791
Counsel			
Biaggi & Ehrlich	804,774	(unknown)	804,774
Consultants			
E. Robert Wallach	585,556	630,000	1,365,556 *
Franlyn Nofziger Mark Bragg	234,595	651,750	886,345
James Jenkins	169,056		169,056
W. Franklyn Chinn	46,892		46,892 **
R. Kent London	1,385,305		1,385,305 **
Richard Ramirez (former Navy official)	41,666		41,666
Gordon Osgood (former Army official)	148,145		148,145

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* Includes $150,000 legal referral fee from Squadron, Ellenoff law firm.

** Does not include $267,000 paid to Chinn and London for travel and entertainment expenses.

e. robert (bob) wallach
[illegible] 2 BOSTON SHIP PLAZA
SAN FRANCISCO, CALIFORNIA [illegible]
[illegible]

February 18, 1982

Don Templeman,
Acting Administrator
Small Business Administration
1441 L Street, N.W.
Washington, D.C. 20005

Re: Welbilt Electronic Dye Corporation

Dear Mr. Templeman:

This is a matter of true urgency which I bring to your attention during this hiatus period awaiting Jim Sanders' confirmation.

For well over a year, contract negotiations between Welbilt and the U.S. Army have transpired. They reached a point where action by SBA Administrator Cardinez was required in order to permit final price negotiations to commence.

There is substantial interest in the rapid accomplishment of the issuance of this contract to Welbilt (including Congressional leadership, e.g., Senator D'Amato [R-N.Y.], and others).

Significant impact upon over 300 human lives and families in the devastated South Bronx is intrinsically involved in the early accomplishment of this contract.

We are in a position to fill you in on the lengthy history. We enclose materials which, in summary fashion, reflect the issues involved.

While we recognize that there is an almost unavoidable tendancy toward inertia during a period of change in leadership, human consideration as well as efficient economy should make this a priority undertaking for your office.

This material is directed to you following a brief conversation I had with Jim Sanders. I was unaware of the fact that he had not as yet been confirmed and he suggested this course of action.

Your earliest possible response will be appreciated.

Best regards.

Very truly yours,

e. robert (bob) wallach

erw:pf
enclosures

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

MAR 19 1982

Mrs. Juanita P. Watts
Director
Office of Small and Disadvantaged
Business Utilization
Department of the Army
Washington, D.C. 20310

Dear Mrs. Watts:

Reference is made to your letter of January 13, 1982, regarding the Army's 8(a) reservation for Welbilt Electrical Die Corporation of an award involving military standard engines.

Your letter requests us to provide Business Development Expense (BDE) funds to offset the $15 million difference between the Army's fair market price and Welbilt's cost proposal.

We want to respond to requests of this kind as affirmatively as we can, but we are required to manage our limited BDE funds as prudently as possible. Average BDE grants to our 2,200 socially and economically disadvantaged firms come to about $100,000. For us to make a multi-million dollar BDE grant to a single firm would, we believe, raise questions about our management of the 8(a) program as a whole. Accordingly, we decline your request.

However, to help bring this matter to conclusion, we ask that the Army proceed to negotiate with Welbilt. We are willing to consider providing BDE funds if the amount requested is reasonable.

I know that you, too, have the best interests of the 8(a) program in mind, and we greatly appreciate your cooperation in pursuing those interests.

Sincerely,

Robert A. Turnbull

FOR Donald R. Templeman
Acting Administrator

Honorable James Jenkins
Deputy Counsellor to the President
The White House
Washington, D.C. 20500

Dear Jim:

At the conclusion of last week's meeting regarding the military standard engine, a gap of $1.75 million remained in Welbilt's financing plan. I am pleased to report to you that the Job Development Corporation (JDC) of the state of New York has now indicated its willingness to participate in the project at a level of $700,000.

This participation by JDC reduces the gap in the financing plan to $1 million. 'In addition, it not only broadens the participation base in the overall financing plan, but also illustrates the keen interest and support in many sectors for this project for the South Bronx. We are diligently continuing our efforts to further narrow the remaining $1 million gap.

The various elements of the financing plan will have to be formalized by Welbilt and incorporated into the HUD/UDAG package to be submitted to HUD no later than June 21.

In view of this deadline, it is imperative that Welbilt (or SBA) receive a letter of intent from the Army by no later than Friday, June 4th. Your assistance in securing an appropriate letter of intent in a timely manner will be greatly appreciated.

Thank you for your attention in this matter.

Sincerely,

Lyn Nofziger

LN/ng
cc: J. Hammond Sculley, Assistant Secretary of the Army
James Sanders, Administrator, Small Business Administration

[illegible] NEW HAMPSHIRE AVENUE N.W. WASHINGTON DC 20009 (202) 332-4030

3 June, 1982

Mr. James Sanders
Administrator
Small Business Administration
1441 L Street, NW
Washington, DC

Dear Jim:

This note is to follow up Lyn Nofziger's letter to Jim Jenkins last week (copy delivered to you by messenger) regarding the Military Standard Engine (MSE) project for the South Bronx. I've attached a copy of Welbilt's revised cost proposal and financing plan for your review and information.

As you can see, there is broad support for the MSE project from numerous institutions in the New York area. This revised proposal narrows the price difference between Welbilt and the Army to less than $1 million. The Army would like to move quickly on the project because of their dire need for the engines.

The key at this juncture is for the meeting between the Army and SBA/Welbilt to take place so that the Army can provide SBA/Welbilt the letter of intent which Welbilt needs to formalize the financing commitments. Time is of the essence since Welbilt must finalize the UDAG package for submittal to HUD no later than June 21st.

Your support and assistance in ensuring a timely meeting with the Army, and in securing the letter of intent, will be greatly appreciated.

Sincerely,

Mark A Bragg

MARK A. BRAGG

Attachment

cc: Honorable James Jenkins, Deputy Counsellor to the President
Mr. J. ~~[illegible]~~ Sculley, Assistant Secretary of the Army
Mr. Don Templeman, Deputy Administrator, SBA
Mr. Peter Neglia, Regional Administrator, SBA
Mr. Robert Wright, AA/MSB'COD, SBA

1605 NEW HAMPSHIRE AVENUE NW WASHINGTON DC 20009 (202) 332-4030

Andy FYI
File Immediately

ATTENTION:
PETE NEGLIA

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

JUN 18 1982

Mr. John Mariotta
President
Welbilt Electronic Die Corp.
595 Gerald Avenue
Bronx, New York 10451

Dear Mr. Mariotta:

The U.S. Small Business Administration is in receipt of your request for Business Development Expense (BDE) assistance totalling $3,000,000 and Advance Payment assistance totalling $2,000,000 in connection with the performance of an Army pilot program requirement, reserved pursuant to Section 8(a) 1(B) of the Small Business Act, for the manufacture of military standard engines.

SBA hereby commits itself to the provision of the aforementioned assistance subject to the following conditions:

1. The successful negotiation of a prime contract between SBA and the Department of the Army.
2. Firm commitments of financing for building acquisition and rehabilitation, said financing to be provided by Manufacture's Hanover Trust Company, the Public Development Corporation of New York, and an Urban Development Action Grant.
3. Compliance with standard SBA requirements and procedures related to the provision of BDE and Advance Payment Assistance.

We look forward to the successful execution of this project.

Sincerely,

Welbilt

[illegible]
Tel. (212) 993-05

June 28, 1982

Mr. Peter Neglia
Regional Administrator
Small Business Administration
26 Federal Plaza-31st Floor
New York, NY 10007

Dear Mr. Neglia:

The purpose of this letter is to request $3 million in BDE support for the purchase of equipment in relation to Welbilt's performance of the Military Standard Engine (MSE) Contract. The BDE will be for the purchase of essential NC and CNC production and testing equipment associated with manufacturing this high performance, high precision engine to military specifications.

Attached you will find complete documentation of the needed equipment along with nomenclature, model numbers, prices, delivery dates, and so forth. We will be delighted to provide any further documentation which you or your staff feel is necessary. Cost Summary Sheet shows total of $4,000,000, $3,000,000 of which will be funded by S.B.A. and $1,000,000 to be obtained thru private financing.

As you are aware, the MSE contract with the Army/TSARCOM is for the manufacture of 13,100 6 HP small gasoline engines for military applications worldwide. The total value of the contract is approximately $32 million and will be performed over a forty-five month period. The MSE is the last remaining project reserved under SBA's Army Pilot Program authority pursuant P.L. 95-507.

The purpose of the Pilot Program, according to the interagency agreement between SBA and the Army, is to place non-traditional, highly technical, multi-year, multi-million dollar requirements into selected 8a companies which would not normally be available under the regular 8a program. The MSE requirement meets all of the foregoing criteria and, given the scale and technical sophistication of the project, we feel our BDE request is reasonable and in consonnance with the purposes of the Army Pilot Project.

We greatly appreciate your consideration of this request, and we stand ready to provide you with any additional information you may need.

Yours truly,

WELBILT ELECTRONIC DIE CORP.

John Mariotta
President

JM/eb
Attachments

July 12, 1983

Mr. John Mariotta, President
Welbilt Electronic Die Corp.
595 Gerard Avenue
Bronx, N.Y. 10451

Certified Mail
Return Receipt Requested

Dear Mr. Mariotta:

We recently learned that your firm had changed its name to Wedtech Corp.

This office is unaware of Wedtech Corp. As you know, Welbilt Electronic Die Corp. was the company approved for the 8(a) program. You are reminded that the "Statement of Cooperation", which you signed on January 25, 1982, indicates that any change in ownership and management or control of your company cannot be made without prior notification to this office.

Kindly advise us if this is a new corporation or merely a change in name. In either case we request that you submit your new corporate kit and supporting documents to this office immediately for our review.

Also, you have filed with the Security and Exchange Commission to go public, under the name of Wedtech Corp. Please provide us with a complete copy of said filing with the Security and Exchange Commission.

In addition, please be advised that pursuant to Agency regulations, the submission of current financial statements on a quarterly basis by certified 8(a) firms is mandatory. Your quarterly financial statement for period ending March 31, 1983 was due by June 30, 1983.

If you have any questions on this matter, you may contact Mr. Ming Yee, Business Development Specialist, at (212) 264-3437.

Sincerely,

Gina A. Sanchez
Assistant District Director
Minority Small Business and
Capital Ownership Development

No dealer, salesman or any other person has been authorized by the Company, the Selling Shareholders or the Underwriters to give any information or to make any representations, other than those contained in this Prospectus, in connection with the offering described herein, and, if given or made, such information or representations must not be relied upon as having been authorized by the Company, the Selling Shareholders or the Underwriters. This Prospectus does not constitute an offer to sell, or a solicitation of an offer to buy, the securities offered hereby in any jurisdiction in which such offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to any person to whom it is unlawful to make such offer or solicitation. Neither the delivery of this Prospectus nor any sale made hereunder shall under any circumstances create an implication that there has been no change in the affairs of the Company since the date hereof.

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Wedtech

1,900,000 Shares

Common Stock

PROSPECTUS

Dated August 25, 1983

MOSELEY, HALLGARTEN,
ESTABROOK & WEEDEN INC.

SUMMARY OF PROSPECTUS

The following is a summary of certain information contained in this Prospectus and is qualified in its entirety by the more detailed information and financial statements appearing elsewhere in this Prospectus.

The Company

Wedtech Corp. (the "Company"), which conducted its business under the name of Welbilt Electronic Die Corp. until June 1983, is primarily engaged in the manufacture of precision machined systems and parts utilized by the United States Department of Defense (the "Defense Department"). Presently, the Company's principal Defense Department contracts are for the production of sub-assemblies which modify the suspension and cooling systems of personnel and cargo carriers in the U.S. Army's M-113 family of armored vehicles. In addition, the Company manufactures other products for the Defense Department. In 1982, the Company received a contract to manufacture 13,100 six horsepower military standard gasoline engines for the Defense Department over a three-year period, with deliveries to commence in 1984. The Company's total backlog at July 31, 1983 was $37,164,000. See "Business —Backlog."

The Company is also actively engaged in research and development and initial marketing efforts relating to process by which various materials may be uniformly coated onto other materials ("substrates") without changing the composition of the substrates.

This Offering involves certain special factors relating to the Company which investors should carefully consider before buying shares. See "Special Considerations."

The Offering

Shares of Common Stock to be sold:		NASDAQ symbol	WEDT
By the Company	1,500,000 shares*	Initial public offering price per share	$16.00
By the Selling Shareholders	400,000 shares	Shares outstanding at August 23, 1983	4,346,700
Estimated net proceeds:			
To the Company	$21,718,000*	Shares to be outstanding after the Offering	5,846,700*
To the Selling Shareholders	$ 5,878,000		

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* Assuming the Underwriters' over-allotment option is not exercised.

The Company expects to issue up to 153,300 additional shares within the next twelve months in connection with its efforts to attract additional senior management personnel. Some or all of such additional shares may be issued for nominal cash consideration.

Use of Proceeds

The net proceeds of this Offering received by the Company are expected to be used for the repayment of certain indebtedness, plant expansion, equipment acquisition, research and development and working capital. See "Use of Proceeds."

Selected Consolidated Financial Information

(In thousands, except per share amounts)

Operating Summary

	Years Ended December 31,					Four Months Ended April 30,	
	1978	1979	1980	1981	1982	1982	1983
	(Unaudited)					(Unaudited)	
Net Revenues	$1,515	$1,730	$5,624	$ 9,781	$20,492	$4,581	$8,838
Net Income (Loss)	$ 126	$ 215	$ 187	$(1,039)	$ 3,134	$ 476	$1,349
Net Income (Loss) Per Share*	$ .03	$ .05	$ .04	$ (.24)	$ .72	$ .11	$ .31
Weighted Average Number of Shares of Common Stock Outstanding Used in Per Share Computation*	4,347	4,347	4,347	4,347	4,347	4,347	4,347

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* All references in this Prospectus to numbers of outstanding shares of Common Stock and per share amounts have been adjusted, where appropriate, to reflect a 19.125-for-1 subdivision of the Common Stock and the issuance of 521,700 shares of Common Stock in June 1983.

Balance Sheet Summary

	April 30, 1983	As Adjusted To Reflect Offering*
	(Unaudited)	
Working Capital	$ 2,930	$ 22,584
Total Assets	$25,668	$ 42,237
Long-term Debt (inclusive of capital leases; exclusive of advance payments on U.S. Government contracts)	6,803	2,554
Total Liabilities	21,619	16,470
Shareholders' Equity	4,049	25,767
Total Liabilities and Shareholders' Equity	$25,668	$ 42,237

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* Assuming the Underwriters' over-allotment option is not exercised.

THE COMPANY

The Company was incorporated under the laws of the State of New York on December 7, 1965 as Welbilt Electronics Die Corp. The Company changed its name in 1983 to Wedtech Corp. Although the Company was initially engaged in the manufacture of sheet metal products, its business expanded in 1980 to the manufacture of precision machined parts for subsystem assemblies. With the commencement of production of the six horsepower gasoline engines for the Defense Department expected to occur by February 1984, the Company will, for the first time, manufacture complete machine assemblies. Since 1975, the Company's business has consisted primarily of the manufacture of precision systems and parts for the Defense Department under contracts obtained through competitive bidding and the Section 8(a) procurement program (the "Section 8(a) Program") of the U.S. Small Business Administration ("SBA").

Since 1980, the Company has been engaged in research and development and initial marketing efforts relating to a process by which various materials may be uniformly coated onto other materials.

The Company's executive offices and principal manufacturing facilities are located at 595 Gerard Avenue, Bronx, New York 10451. The Company's telephone number is (212) 993-0500.

SPECIAL CONSIDERATIONS

In analyzing the Company and its business with a view to making an investment decision whether or not to purchase shares, investors should be aware that although the Company has been in business since 1965, it has shown substantial growth only in recent years. Moreover, the Company is entering into a coating business, which will involve the introduction of a new process and in which it has no prior production or marketing experience. Investors should be aware of the following special considerations which may confront the Company in the next few years:

1. *Rapid Growth.* The Company's revenues have increased from $1,515,000 in 1978 to $20,492,000 in 1982. Substantially all of this growth in revenues came from United States Government contracts. In 1982, approximately 61% of the Company's revenues were derived from its participation in the Section 8(a) Program of the SBA and at June 30, 1983 approximately 97% of the Company's backlog related to contracts awarded pursuant to the Section 8(a) Program. The Section 8(a) Program provides special opportunities for minority-owned small business concerns in connection with government contracts. Upon the issuance of the shares offered hereby, the Company may no longer be qualified to obtain new contracts under the Section 8(a) Program. Consequently, the Company may be required to obtain contracts through competitive bidding in competition with a considerable number of firms, many of which have significantly greater financial resources, more personnel and larger facilities than the Company.

2. *Management.* The successful growth of the Company's business has been and will continue to be dependent upon the Company's ability to retain and attract effective senior and middle management personnel. To sustain this growth it will be necessary for the Company to expand its marketing capabilities, including the development of a marketing plan for its coating business and the recruitment of effective personnel to accomplish this plan.

3. *Coating Business.* The coating business which the Company proposes to enter is dependent upon the process developed by Dr. Eduard Pinkhasov. Although many coating processes presently exist, including processes similar in certain respects to that of the Company, to the Company's knowledge the coating process developed by the Company is unique and has not been used in the past for commercial applications. Although the Company has taken steps to assure that Dr. Pinkhasov will continue to work for the Company and will have a significant financial stake in the success of the coating business, in the event of the loss of Dr. Pinkhasov's services, the implementation of production and continued development of the Company's coating business may be severely jeopardized. In addition, because the coating process utilizes new techniques, commercial customers may initially place orders for limited quantities of items and may subject such items to testing over a period of time prior to placing any further orders. See "Business—Coating Process."

4. *Scaling Up to Production Capability.* The success and profitability of the Company's coating process will depend upon the development of commercially feasible production capability. The Company's present equipment has to date been used for testing and the production of samples for prospective customers. Upon receipt of a substantial order, the Company will have to acquire additional equipment and "scale up" its process and equipment in order to commence commercial production. Although the Company has developed manufacturing processes in its machined parts business, the Company has no experience in scaling up the production processes to be used in its coating business. Problems during the scale up phase may be encountered and could adversely affect the Company's results. Moreover, the Company's projections of the costs involved in producing coating products are necessarily only estimates at this stage.

5. *Protection of the Coating Process.* The Company has taken steps to patent the apparatus and process to be used in its coating business and intends initially to manufacture products using its process rather than to license the process to potential users. The Company has been awarded or has filed applications for patents in the United States and elsewhere covering certain aspects of its coating process, but pending patent applications may not issue as patents in the form applied for and any issued patent may be subject to various legal attacks by competitors. See "Business—Patents." If the coating process to be introduced by the Company is commercially successful, efforts may be made to copy the Company's methods. In such event, competition from concerns with substantially more economic and technical capability than that possessed by the Company can be expected.

6. *Financings.* The Company, like many companies which experience rapid growth, has encountered cash flow problems. See "Certain Transactions." The Company will need to expend substantial additional funds in connection with the development of its manufacturing and marketing capabilities. Management believes on the basis of the Company's current backlog, outstanding and anticipated manufacturing contracts and planned expansion of the Company's coating business, that the proceeds from the sale of the shares offered hereby, together with short term bank borrowings, will satisfy its cash needs for approximately the next two years. Faster than expected growth in the manufacturing business and, more particularly, rapid growth of the coating business, would, however, require significant investment in plant, equipment and marketing, and concomitant significant additional financing by the Company. The availability of such financing will depend on numerous factors, many of which are beyond the Company's control. See "Management's Discussion and Analysis of Financial Condition and Results of Operations."

DILUTION

During 1983, the Company issued 67,500 shares of Common Stock to each of Messrs. Lawrence Shorten and Anthony Guariglia, officers of the Company, and 112,500 shares of Common Stock to Mr. Bernard G. Ehrlich, who is expected to be elected a director of the Company following the completion of this Offering. All such shares were issued for nominal cash consideration. Such shares represented 5.7% of the shares outstanding at the date of this Prospectus. See "Certain Transactions." The shares issued to Messrs. Shorten, Guariglia and Ehrlich were the only shares issued by the Company to officers, directors, promoters or affiliated persons of the Company during the past five years, although the Company has issued 259,200 shares of Common Stock during 1983 to five individuals and a partnership which provided employment, consulting or professional services to the Company.

As of April 30, 1983, the net tangible book value of the Company's Common Stock (adjusted to reflect a 19,125-for-1 subdivision of the Common Stock and the issuance of 521,700 shares of Common Stock in June 1983) was approximately $.93 per share. "Net tangible book value per share" is the amount of the Company's tangible assets (i.e., total assets less intangible assets) less its liabilities, divided by the number of shares of Common Stock outstanding. After giving effect to the sale by the Company of 1,500,000 shares of Common Stock and the receipt of the net proceeds therefrom, and without taking into account any changes in net tangible book value per share of the Common Stock after April 30, 1983, other than those resulting from this Offering, the pro-forma net tangible book value per share of Common Stock will increase to $4.41 (assuming an initial public offering price of $16.00 per share). The immediate dilution to public investors (i.e., the difference between the public offering price per share and the pro-forma net tangible book value per share after giving effect to the Offering) will be approximately $11.59 per share.

The following table illustrates this dilution on a per share basis:

Public offering price		$16.00
Net tangible book value before Offering	$ .93	
Increase attributable to payment by new public investors*	3.48	
Pro-forma net tangible book value after Offering		4.41
Dilution to new public investors		$11.59

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* After deduction of underwriting discounts and commissions to be paid by the Company in connection with the Offering estimated at $1.16 per share, and after deducting other expenses of the Offering.

The foregoing calculations assume no shares will be issued pursuant to the exercise of the Underwriters' over-allotment option or pursuant to the exercise of outstanding incentive stock options or warrants. See "Management—1983 Incentive Stock Option Plan", "Certain Transactions" and "Underwriting."

The Company expects to issue up to 153,300 additional shares within the next twelve months in connection with its efforts to attract additional senior management personnel. Some or all of such additional shares may be issued for nominal cash consideration.

USE OF PROCEEDS

The net proceeds to be received by the Company, after deduction of all applicable expenses and without giving effect to the exercise by the Underwriters of their over-allotment option, will be approximately $21,718,000. The Company will not receive any proceeds from the sale of shares by the Selling Shareholders.

The Company will use a portion of the proceeds of this Offering to repay in full all indebtedness of the Company to, or which is guaranteed by, the Economic Development Administration of the U.S. Department of Commerce. The aggregate amount of such indebtedness to be repaid approximates $3,249,000. Such indebtedness is comprised of: a 13% note due to a bank in installments to June 15, 1987, of which $510,949 was outstanding on August 23, 1983; a 12¼% mortgage due to a bank in installments to February 26, 2000, of which $1,071,671 was outstanding on August 23, 1983; a 12¼% mortgage due to a bank in installments to July 28, 2000, of which $349,686 was outstanding on August 23, 1983; and a 10½% note due to the Economic Development Administration in installments to July 22, 1986, of which $1,317,115 was outstanding on August 23, 1983. The Company also will use a portion of the proceeds of this Offering to repay three 8% promissory notes payable on demand representing loans made to it in May 1983 by its three principal shareholders in the aggregate principal amount of $500,000. The Company will also repay loans made to it in June 1983 by banks in the principal amount of $1,400,000. These loans are due on the earlier of March 1984 or the completion of this Offering. Of the amount to be repaid, $900,000 bears interest at the prime rate plus 3% and $500,000 bears interest at the prime rate plus 2%. For additional information relating to the aforesaid indebtedness, see Notes 6 and 14 to "Consolidated Financial Statements" and "Certain Transactions."

The Company expects to spend approximately $9,500,000 of the proceeds of this Offering to expand plant capacity and to acquire machinery and equipment in connection with the anticipated development of its coating business. See "Business—Coating Process." The Company also intends to utilize approximately $3,000,000 of the proceeds of this Offering for research and development in connection with the Company's coating process, including the expansion of its laboratory and testing facilities. In addition, approximately $1,700,000 of the proceeds of this Offering to be added to working capital will be used to develop the Company's marketing and sales programs, principally in connection with the coating process. Expenditures for these programs will be for marketing and sales personnel and advertising and promotion.The amounts expected to be spent in connection with the Company's coating business are estimates and are subject to revision.

The balance of the proceeds, approximately $4,069,000 (including the $1,700,000 referred to above to be used in connection with the Company's marketing and sales programs), will be added to working capital. Approximately $2,000,000 will be utilized to pay past-due accounts payable to vendors (see "Management's Discussion and Analysis of Financial Condition and Results of Operations"). Any additional proceeds received in the event of the exercise of the Underwriters' over-allotment option will be added to working capital and used for general corporate purposes. Pending utilization of the proceeds of this Offering, the Company may make investments in bank certificates of deposit, interest-bearing savings accounts, United States Government obligations or similar short-term investments.

In the opinion of management, and on the basis of the Company's current backlog, outstanding and anticipated manufacturing contracts and planned expansion of the Company's coating business, the proceeds to the Company, together with the Company's anticipated cash flow from its operations and short-term bank borrowings, will be sufficient to meet the cash requirements of the Company for approximately two years. If the business operations of the Company were to increase significantly over current and anticipated business levels, including increases from the development of the Company's coating business, the Company may find it necessary to seek additional capital at an earlier date.

DIVIDEND POLICY

The Company has not paid any cash dividends on its Common Stock and does not expect to pay any cash dividends on its Common Stock in the foreseeable future. Under the terms of its current borrowing arrangements the Company is restricted from paying dividends. The payment of dividends in the future will depend upon the Company's available earnings, its capital requirements, its borrowing arrangements, its general financial condition and other factors deemed pertinent by the Board of Directors. The Company's anticipated capital requirements are such that it intends to follow a policy of retaining earnings in order to finance the development of its business.

CAPITALIZATION

The following table sets forth the consolidated capitalization of the Company at April 30, 1983, and as adjusted to give effect to the issuance and sale of the shares being offered by the Company hereby (assuming the Underwriters' over-allotment option is not exercised), and the application of a portion of the proceeds therefrom to repay certain indebtedness:

	Outstanding	As Adjusted
	(Unaudited)	
Short-term debt	$ 1,400,724	$ 1,400,724
Long-term debt (inclusive of capital leases; exclusive of advance payments on U.S. Government contracts)(1)(2)	6,803,336	5,418,864
Shareholders' equity(3):		
Common Stock, par value $.01 per share; authorized 15,000,000 shares; outstanding 4,346,700 shares; to be outstanding after completion of the Offering 5,846,700 shares	43,467	58,467
Additional paid-in capital	0	21,703,000
Retained earnings	4,005,039	4,005,039
Total shareholders' equity	4,048,506	25,766,506
Total capitalization	$10,851,842	$31,185,370

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(1) The Company plans to use approximately $3,249,000 of the proceeds of this Offering to repay long-term debt. See "Use of Proceeds."

(2) Subsequent to April 30, 1983, the Company entered into a new financing arrangement with a bank which resulted in $3,000,000 of additional long-term debt and a repayment of $1,035,472 of previously existing long-term debt. See Note 14 to "Consolidated Financial Statements."

(3) Adjusted to reflect a 19.125-for-1 subdivision of the Common Stock and the issuance of 521,700 shares of Common Stock in June 1983.

The Company expects to issue up to 153,300 additional shares within the next twelve months in connection with its efforts to attract additional senior management personnel. Some or all of such additional shares may be issued for nominal cash consideration.

In addition, the Company has in the past been obligated to make certain loans to the Company's Israeli affiliate, Carmo Industries Limited. See "Business—Interest in Israeli Corporation." The obligations of the Company to Carmo Industries Limited have resulted in additional cash flow demands upon the Company, which have been alleviated by bank and other borrowings. If the rate of development of the Company's coating business exceeds the Company's expectations, it may be necessary for the Company to seek additional equity financing.

The Company's working capital increased for the year ended December 31, 1982 by approximately $3,000,000 and in the four months ended April 30, 1983 by an additional $300,000. These increases were due primarily to net income from operations adjusted for non-cash charges.

Management does not consider inflation to have had a material effect on the Company's operations.

BUSINESS

The Company is primarily engaged in the manufacture of precision machined systems and parts utilized by the United States Department of Defense (the "Defense Department"). Presently, the Company's principal contracts are for sub-assemblies which modify and upgrade the suspension and cooling systems of personnel and cargo carriers in the U.S. Army's M-113 family of armored vehicles. In 1982 the Company received a contract to manufacture 13,100 six horsepower military standard gasoline engines for the Defense Department over a three-year period, with deliveries to commence in 1984.

The Company is also actively engaged in research and development and initial marketing efforts relating to a process by which various materials may be uniformly coated onto other materials ("substrates") without changing the composition of the substrates.

Manufacturing Operations

The Company's manufacturing operations consist primarily of the manufacture of precision machined systems and parts for the Defense Department. In 1982, Defense Department procurements accounted for 95% of the Company's revenues. The Company generally bids on Defense Department contracts of a duration of greater than one year, or which contain options to increase the quantity of items ordered under such contracts exercisable by the Defense Department, in order to decrease the impact of pre-production expenses and tooling costs. The Company has received its Defense Department contracts by competitive bidding and also pursuant to the Section 8(a) Program of the SBA. The Section 8(a) Program was created pursuant to Section 8(a) of the Small Business Act to provide special opportunities for minority-owned small businesses in connection with U.S. Government contracts. In 1982, approximately 61% of the Company's revenues were derived from its participation in the Section 8(a) Program. Upon the issuance of the Common Stock offered hereby, the Company may no longer be qualified to obtain new contracts under the Section 8(a) Program. The Company does not believe that such termination would have any effect on any contracts previously awarded to the Company. See "Section 8(a) Small Business Program/Labor Surplus Area Contractor" below.

All Defense Department contracts provide that they may be terminated in whole or in part at the convenience of the Government. Upon any such termination, the Company would be entitled to reimbursement in accordance with the formula set forth in the applicable government procurement regulation. The termination of any of the Company's significant contracts could have a material adverse effect on the Company's earnings and business. As of the date of this Prospectus, none of the Company's Defense Department contracts had ever been terminated in whole or in part.

The Company's principal contracts include the following:

Armored Personnel and Cargo Carrier Modifications.

The Defense Department has authorized certain modifications to the personnel and cargo carriers in its M-113 family of armored vehicles, including the installation of improved suspension, cooling and heating systems and armored grill assemblies. There are approximately 48,000 armored personnel and cargo carriers in the M-113 family distributed worldwide, of which approximately 20,000 are used by the U.S. Armed Forces. Significant numbers of such carriers are also utilized by the Armed Forces of Canada, Israel and West Germany. The Company has entered into contracts to manufacture such modifications to

The Company's initial investment in Carmo consisted of $156,000 paid for shares of Carmo plus acquisition costs of $103,863 and $1,294,000 loaned to Carmo. Of such investments, $1,450,000 was borrowed by the Company from a commercial bank. The loan is secured by a pledge of the Company's shares of Carmo. As of August 23, 1983 the Company's investment in and loans to Carmo had increased to $539,578 and $1,729,000, respectively. All loans made by the Company to Carmo are secured by liens on Carmo's machinery and equipment. In addition, the Company has agreed to furnish Carmo with up to $4,000,000 of purchase orders annually. Pursuant to a shareholders agreement, the Board of Directors of Carmo can compel Carmo's shareholders to make additional loans to Carmo. The Company believes that its obligations for such additional loans at August 23, 1983 are limited to approximately $170,000. Although the Company owns 50% of Carmo's voting shares and controls 50% of its Board of Directors, the articles of association of Carmo provide that in the event of a deadlock of the shareholders or the Board of Directors of Carmo, a special shareholder would be entitled to cast the deciding vote. Such special shareholder had not been selected as of August 23, 1983. In the event that the shareholders or Board of Directors of Carmo were to authorize an increase in the capital of Carmo, the Company would be required to make additional investments in Carmo in order to maintain its percentage equity interest therein.

Section 8(a) Small Business Program/Labor Surplus Area Contractor

With respect to certain solicitations for Defense Department contracts, the Company has, since 1975, submitted bids as a minority-owned small business concern pursuant to Section 8(a) of the Small Business Act and the procurement regulations promulgated thereunder by the SBA (the "Section 8(a) Program"). A minority-owned small business concern is one which is independently owned and operated, which is not dominant in its field of operations, which complies with certain other SBA requirements and which is at least 51% owned by one or more persons who are members of certain minority groups and whose management and daily business operations are controlled by one or more of such persons. The U.S. Government has a policy of setting aside procurements for the exclusive participation of minority-owned small business concerns which are certified to participate in the Section 8(a) Program. As a result of its certification under the Section 8(a) Program, the Company has received substantial competitive advantages with respect to Defense Department contracts.

Upon the completion of this Offering, the Company may no longer be eligible to participate in the Section 8(a) Program. The Company does not believe that such termination would have any effect on any contracts previously awarded to the Company. In the event of the termination of its eligibility to participate in the Section 8(a) Program, the Company would be required to compete for Government contracts on the same basis as other companies. See "Competition."

The Company estimates that during the years ended December 31, 1982, 1981 and 1980 approximately $12,598,000, or 61%, $8,012,000, or 82%, and $4,701,000, or 84%, respectively, of its revenues resulted from contracts awarded to the Company by the SBA pursuant to the Company's certification as a minority-owned small business concern. During the years ended 1982, 1981 and 1980, approximately $6,802,000, or 33%, $1,214,000, or 12%, and $425,000, or 7%, respectively, of the Company's revenues resulted from other U.S. Government contracts awarded to the Company.

The Company's manufacturing facilities are located in the City of New York which, because of its high unemployment rate, has been designated a "labor surplus area" as determined by the regulations of the U.S. Department of Labor. Therefore, the Company is a "labor surplus area contractor" for the purposes of certain U.S. Government procurements. It is the policy of the U.S. Government to give priority in the awarding of contracts and grants to labor surplus area contractors. In addition, certain procurements may be set aside, either partially or fully, for labor surplus area contractors. Although the Company does not believe that such designation has resulted in any material benefit to it heretofore, there may be circumstances in the future where such designation would have an effect on the awarding of U.S. Government contracts.

Backlog

The Company records as backlog all firm orders for delivery at certain dates. The Company's total backlog at June 30, 1983 was approximately $38,723,000, consisting of $37,481,000 of Defense Department contracts awarded under the Section 8(a) Program, $895,000 under other Defense

Department contracts and $347,000 under contracts and purchase orders with companies in the private sector. At June 30, 1982, the backlog was approximately $14,352,000, consisting of $5,614,000 of Defense Department contracts awarded under the Section 8(a) Program, $8,227,000 under other Defense Department contracts and $511,000 under contracts and purchase orders with companies in the private sector. Of the Company's total backlog at June 30, 1983, approximately $26,719,000 is not expected to be realized during 1983. The foregoing backlog figures do not include options under which customers have a right to re-order on the same terms as current contracts. The Company is currently in substantial compliance with all delivery timetables relating to its products.

Competition

The Defense Department contracts obtained by the Company pursuant to the Section 8(a) Program have resulted from set-aside procurements available only to minority-owned small business concerns, and have not involved significant competition with other contractors. The Defense Department contracts awarded to the Company pursuant to competitive bidding processes have resulted from the submission of low bids by the Company. As a result of this Offering, the Company may no longer be qualified to obtain new contracts under the Section 8(a) Program. Consequently, the Company's future contract procurement may require the Company to offer customers products which are competitive in price and in quality with those available from other vendors. The Company's sole current business segment, the manufacture of precision machined systems and parts, is highly competitive. There are a considerable number of competitors engaged in all aspects of this business, many of which have significantly greater financial resources, larger facilities and more personnel than the Company.

The Company believes that the current state of the development of its coating process places it ahead of its potential competition in the coating business. If the coating process is commercially successful, efforts may be made to copy the Company's methods. In such event, competition from concerns with substantially more economic and technical capability than that possessed by the Company can be expected.

Suppliers

The Company's manufacturing operations require a variety of metal components to be cast or forged. The Company has arrangements with various firms, including Carmo, to provide such castings and forgings. The Company believes that the materials and supplies it requires are readily available, that it is not dependent upon any particular subcontractor or vendor, and that alternate sources for the items it purchases are available.

Employees

The Company currently employs approximately 340 persons on a full-time basis. The Company's 230 production and maintenance employees and truck drivers are covered by a collective bargaining agreement with Local 875 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. The current term of such agreement commenced on April 27, 1983 and extends through April 27, 1986. The Company considers its employee relations to be satisfactory.

In connection with its contract to manufacture the six horsepower military standard engine, the Company may hire up to an additional 150 employees during the period 1983 to 1985.

Property

The Company's executive offices and principal manufacturing facilities are located in a three story, 130,000 square foot building at 595 Gerard Avenue, Bronx, New York, which is owned by the Company. The Company also owns an 11,000 square foot building at 1049 Washington Avenue and a 115,000 square foot building at 350 Gerard Avenue in The Bronx. The 1049 Washington Avenue building is being used by the Company to manufacture waveguides and for other production operations. The 350 Gerard Avenue building would require extensive renovation in order to be utilized by the Company. The

Company is planning to undertake such renovation, and has received commitments for financial assistance relating to such renovation from various government agencies.

A majority-owned subsidiary of the Company, Vanora, Ltd., owns and leases to the Company a 95,000 square foot building at 112 Bruckner Boulevard in The Bronx. This building was acquired in June 1982, for an aggregate consideration of $700,000. The lease with respect to this building extends to June 1992 and provides for the payment of base rent of $19,375 per month. The minority interest in Vanora, Ltd. is owned by a person who is not affiliated with the Company. The Company believes that the rental paid to Vanora, Ltd. with respect to the Bruckner Boulevard property is comparable to the rental which would be payable in an arm's-length transaction. The Company expects to utilize the Bruckner Boulevard property for the assembly and testing of the six horsepower military standard engine.

Equipment

The Company's business has required the acquisition of significant amounts of machinery and tools. Certain of the machinery utilized by the Company is leased under long-term lease agreements. In addition, the Company has financed certain such acquisitions from governmental assistance authorized for such acquisitions and bank borrowings. The Company's continued operations will require significant additional expenditures for machinery and tools. See "Use of Proceeds."

Research and Development

The Company's current and anticipated research and development activities are and will continue to be devoted primarily to the development of the Company's coating process. See "Use of Proceeds." In 1982, 1981 and 1980, the Company incurred expenses of $627,010, $275,336 and $15,750, respectively, in connection with research and development relating to the coating process. All such activities were sponsored by the Company.

Patents

As assignee of certain of Dr. Pinkhasov's rights in the coating process described above, the Company has sought patents to protect its rights. See "Special Considerations." An application was filed with the U.S. Patent and Trademark Office (the "Patent Office") in February 1981 claiming rights in both the apparatus used in, and the method associated with, the coating process. In response to a Patent Office request that the Company "restrict" the submitted application, the original application was limited to claims for patent rights to the apparatus and a first "continuation in part" application was filed as to the method. The first continuation in part application included claims for the patent rights to the method as set forth in the original application along with claims for patent rights to refinements in and applications of the coating process that resulted from research performed by the Company after the date the original application was filed. The first continuation in part application thus made broader claims for patent protection of the method aspect of the coating process than did the original application.

A patent was issued to the Company with respect to the apparatus used in the coating process on September 28, 1982. The Company was advised by the Patent Office on March 18, 1983 that all the claims set forth in its first continuation in part application are allowable, and the Company therefore expects that the patent will in due course also be issued for the method aspect of the coating process. Applications have been made to obtain patent protection for certain of the Company's rights to the coating process in nine foreign jurisdictions as well.

Research performed since the filing of the first continuation in part application has led to further refinements of the coating process. The Company believes it has now improved the application of the coating process to enable the coating of large areas and long items. A second continuation in part application has therefore been filed with the Patent Office with respect to these newest developments. The Company is awaiting the Patent Office's response to this latest application.

Although the patents described above may give the Company some protection from infringement by competitors, a substantial number of the patents issued by the Patent Office in all fields ultimately are found by a court to be not valid. Consequently, although the Company will continue to seek patent protection, its success in the coating business will be dependent upon its ability to compete effectively on the basis of production efficiency, quality, cost and marketing, and the Company is not relying exclusively on the patents it has obtained or hopes to obtain to protect it from competition. See "Special Considerations."

with U.S. treasury bills. In consideration of the guarantee, the Company issued to such persons 15,000 shares of Common Stock and warrants to purchase 25,000 shares of Common Stock at an exercise price of $16 per share, exercisable for five years. In the event that none of such warrants is exercised, the warrant holders have the right, exercisable within 30 days after the expiration of the five year period, to require the Company to repurchase the warrants for $500,000. In addition, the Company has granted such persons registration rights with respect to the 15,000 shares and the shares issuable upon exercise of the warrants in the event that the Company should make a public offering of its securities subsequent to this Offering. For thirty days after the completion of this Offering, such persons have the right to sell up to 3,000 shares to the Company at 92½% of the initial public offering price. Messrs. Mariotta, Neuberger and Moreno have also personally guaranteed that the Company will repay the $900,000 bank loan. To secure such guarantees, the Company has granted Messrs. Mariotta, Neuberger and Moreno a subordinated mortgage and security interest in substantially all of the Company's real and personal property. The Company will utilize a portion of the proceeds of this Offering to repay the $900,000 bank loan.

Also in June 1983, the Company borrowed an additional $500,000 from another bank, for a period of nine months. The repayment of this loan was guaranteed by an individual who is not affiliated with the Company. The guarantee obligation was fully collateralized by the guarantor. In consideration of this guarantee, the Company issued to this individual warrants to purchase 30,000 shares of Common Stock at an exercise price of $17 per share. The warrants are exercisable for five years. With respect to the Warrants to purchase 20,000 of the shares, the warrant holder has a right to require the Company to purchase up to 10,000 of the warrants (less the number theretofore exercised) on and after December 31, 1984, and the balance thereof on and after December 31, 1985, subject to various conditions. The purchase price for such warrants would be the market value of the Common Stock for the thirty trading days prior to the date of exercise, less the exercise price. The Company has granted the warrant holder registration rights with respect to the 30,000 shares issuable upon the exercise of the warrants in the event that the Company should make a public offering of its securities subsequent to this Offering. The Company agreed to indemnify the guarantor with respect to any costs or liabilities in connection with the guarantee. To secure its indemnification obligation, the Company granted the guarantor a subordinated mortgage and security interest in substantially all of the Company's real and personal property. The Company will utilize a portion of the proceeds of this Offering to repay the $500,000 bank loan.

PRINCIPAL AND SELLING SHAREHOLDERS

The following table sets forth, as of August 23, 1983, certain information concerning (a) the only shareholders of the Company who owned beneficially more than five percent of the outstanding Common Stock of the Company, (b) the Selling Shareholders, (c) all directors and nominees therefor, and (d) all directors and officers of the Company as a group, and their respective shareholdings as of such date (according to information furnished by them to the Company) and adjusted to reflect the completion of this Offering. To the knowledge of the Company, following the completion of the Offering all such persons will have sole voting and investment power with respect to such shares.

	Shares Owned Prior to Offering			Shares Owned After Completion of Offering(1)	
Name	Number	Percent of Class	Shares Being Offered	Number	Percent of Class
John Mariotta	1,740,375	40.0	182,000	1,558,375	26.7
Fred Neuberger	1,740,375	40.0	182,000	1,558,375	26.7
Mario Moreno	344,250	7.9	36,000	308,250	5.3
Bernard G. Ehrlich	112,500(2)	2.6	—	112,500(2)	1.9
Frederick Moss	—	—	—	—	—
All Directors and Officers as a Group (5 persons)	3,960,000	91.1	400,000	3,560,000	60.9

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(1) Assuming the Underwriters' over-allotment option is not exercised.

(2) Does not include 112,500 shares of Common Stock owned by Richard Biaggi, an associate of Mr. Ehrlich in the practice of law, as to which shares Mr. Ehrlich disclaims any beneficial interest.

The Company expects to issue up to 153,300 additional shares within the next twelve months in connection with its efforts to attract additional senior management personnel. Some or all of such additional shares may be issued for nominal cash consideration.

At the date of the Prospectus, there were fourteen holders of record of Common Stock. See "Underwriting" for information relating to agreements by the directors and officers of the Company (including the Selling Shareholders) with respect to prohibition of sales of the Common Stock held by them, other than the shares to be purchased by the Underwriters from the Selling Shareholders, during the 120-day period commencing on the date of this Prospectus.

SHARES ELIGIBLE FOR FUTURE SALE

Upon completion of this Offering and assuming no exercise of the Underwriters' over-allotment option, the Company will have an aggregate of 5,846,700 shares of Common Stock outstanding. Of such shares, 3,946,700 will be held by persons who acquired such shares pursuant to an exemption from the registration requirements of the Securities Act of 1933 (the "Act"). In addition, the Company expects to issue up to 153,300 additional shares within the next twelve months, in connection with its efforts to attract additional senior management personnel, pursuant to an exemption from the registration requirements of the Act. None of the shares issued pursuant to such exemption may be sold by the holder thereof unless registered under the Act or sold pursuant to an applicable exemption from registration, such as Rule 144 under the Act.

Generally, under Rule 144 as currently in effect, a person (or persons whose shares are aggregated) may sell within any three-month period a number of shares that does not exceed the greater of 1% of the total number of outstanding shares of Common Stock or the average weekly trading volume of Common Stock during the four calendar weeks preceding the sale, provided that such person has held such shares for at least two years prior to sale. Rule 144 also permits, under certain circumstances, the sale of shares without any quantity limitation by a person who is not an "affiliate" of the Company and who has held the shares for at least three years.

Commencing 90 days after the date of this Prospectus, present shareholders of the Company will be entitled to sell all of their present holdings of Common Stock to the public subject to compliance with Rule 144 under the Act. However, it is impossible to predict the number of shares of Common Stock which may actually be sold in the future pursuant to Rule 144 since sales will depend upon the market price of the Common Stock, the personal circumstances of holders thereof and other factors. Any sales of substantial amounts in the open market could have a significant adverse effect on the market price of the Common Stock.

Each director and officer of the Company, including each Selling Shareholder, has agreed not to sell or otherwise dispose of any shares of Common Stock for a period of 120 days after the date of this Prospectus, without the prior written consent of Moseley, Hallgarten, Estabrook & Weeden Inc., the Representative of the Underwriters.

The Company is not aware of any plan, arrangement, commitment or undertaking by a director, officer or principal shareholder of the Company to sell shares of Common Stock pursuant to Rule 144 within the 12 month period following the consummation of this Offering.

DESCRIPTION OF COMMON STOCK

The Company is authorized to issue 15,000,000 shares of Common Stock, $.01 par value per share, of which 4,346,700 shares were issued and outstanding on August 23, 1983. Each share of Common Stock is entitled to one vote at all meetings of shareholders for the election of directors and on all other matters that are submitted to the vote of the shareholders. Holders of Common Stock are not entitled to cumulate their votes for the election of directors. Shares of Common Stock are not subject to mandatory redemption, and the holders of such shares do not have conversion or preemptive rights. All shares of Common Stock have equal dividend rights. Dividends may be paid to the holders of the Common Stock when, as and if declared by the Board of Directors out of funds legally available therefor. The holders of the Common Stock are not liable to further call or assessment and are entitled to share ratably in the assets of the Company legally available for distribution to such shareholders in the event of the liquidation, dissolution or winding up of the affairs of the Company. The Common Stock currently outstanding is, and the Common Stock offered by the Company hereby when issued, will be, validly issued, fully paid and nonassessable.

The transfer agent and registrar for the Company's Common Stock is Bank Leumi Trust Company of New York.

certain conditions, to purchase the same percentage thereof as the number of shares to be purchased and offered by that Underwriter in the above table bears to 1,900,000.

Pursuant to the Underwriting Agreement, the Company and the Selling Shareholders have severally agreed to indemnify the Underwriters, and the Underwriters have agreed to indemnify the Company and the Selling Shareholders, against certain liabilities, including liabilities under the Securities Act of 1933. The Company and the Selling Shareholders have agreed to bear all costs and expenses of this Offering.

The Company, its present officers and directors and the Selling Shareholders have agreed that, except as respects Company issuances relating to exercised stock options, for a period of 120 days after the date of this Prospectus, they will not sell or otherwise dispose of shares of Common Stock without the prior written consent of the Representative. See "Shares Eligible for Future Sale."

The Underwriters do not intend to confirm sales to any accounts over which they exercise discretionary authority.

Prior to this Offering, there has been no public market for the Common Stock and there can be no assurance that a market will develop. However, it is expected that after this Offering the shares will trade in the over-the-counter market and that the prices will be reported on NASDAQ under the symbol WEDT.

The initial public offering price of the shares has been arbitrarily determined by negotiations among the Company, the Selling Shareholders and the Representative of the Underwriters. The factors considered in determining such public offering price included, among other things, the prevailing market conditions and the market value of the companies believed to have operations reasonably comparable to those of the Company. There can be no assurance that the Company's future operating experience will parallel the operating experience of such other companies, that the price at which the Common Stock will sell after this Offering will parallel the market performance of the securities of such companies, or that the price at which the Common Stock will sell in the public market after this Offering will not be lower than the price at which it is sold by the Underwriters.

Pursuant to an agreement between the Company and Moseley, Hallgarten, Estabrook & Weeden Inc., the latter has the right, for a period of five years after the date of this Prospectus, to nominate a director of the Company. Pursuant to such agreement, it is expected that Frederick Moss, a Director and the Executive Vice President of Moseley, Hallgarten, Estabrook & Weeden Inc., will be elected a director of the Company upon the completion of this Offering. See "Management—Directors, Executive Officers and Significant Employees." Also pursuant to such agreement, Moseley, Hallgarten, Estabrook & Weeden Inc. will have a right of first refusal, for a period of five years after the date of this Prospectus, to act as the Company's investment banker with respect to any public or long-term private financing done by the Company.

LEGAL OPINIONS

The legality of the securities being offered hereby is being passed upon for the Company by Squadron, Ellenoff, Plesent & Lehrer, 551 Fifth Avenue, New York, New York 10176. Shearman & Sterling, 53 Wall Street, New York, New York 10005 will pass upon certain legal matters for the Underwriters. Squadron, Ellenoff, Plesent & Lehrer owns 45,000 shares of Common Stock of the Company, which shares were acquired from the Company for nominal consideration.

ANNUAL REPORTS

The Company will furnish its shareholders annual reports containing financial statements certified by independent public accountants, quarterly reports containing unaudited financial information and such interim and other reports as it deems appropriate.

EXPERTS

The consolidated financial statements of the Company and schedules thereto which are included in this Prospectus and elsewhere in the Registration Statement of which this Prospectus forms a part have been examined by Main Hurdman, independent certified public accountants, and have been so included herein in reliance upon such opinions of that firm as an expert in auditing and accounting.

September 14, 1983

CERTIFIED MAIL
RETURN RECEIPT
REQUESTED
#P02 353 1675

Mr. John Mariotta, President
Welbilt Electronic Die Corp.
595 Gerard Avenue
Bronx, New York 10451

Dear Mr. Mariotta:

The New York District Office has recently completed a review of your firm's business operations as it relates to its participation in the Small Business Administration's 8(a) Program.

As a result of this review, it is the intention of this office to recommend to the Associate Administrator for Minority Small Business and Capital Ownership Development that your firm's participation in the Section 8(a) Program be terminated.

The specific reasons for such recommendation are:

1. Failure of the 8(a) concern to continue to meet the standards of eligibility set forth in these regulations.

   This office has learned that your firm has changed the name to WEDTECH CORP. and has filed a petition with the Securities and Exchange Commission to go public.
   Page eleven of the Preliminary Prospectus, dated July 1, 1983, prepared by Moseley, Hallgarten, Estabrook and Weeden, Inc., states that "Upon the issuance of the common stock offered hereby the Company will no longer be qualified to obtain new contracts under the Section 8(a) Program".

2. Failure of the 8(a) concern to maintain ownership and control by the individual who was determined to be socially and economically disadvantaged.

   The change in the structure of the corporation and the new make up of the Board of Directors can affect WELBILT's eligibility status as an 8(a) firm.
   Page fifteen of the Preliminary Prospectus, dated July 1, 1983, prepared by Moseley, Hallgarten, Estabrook and Weeden, Inc., states that "Upon completion of this offering, the Company will no longer be at least 51% minority-owned and, consequently, the Company's eligibility to participate in the Section 8(a) Program will terminate".

3. Failure to obtain the prior approval of the AA/MSB-COD of any change in ownership and management control.

We have no record of having received from you the necessary request to make the changes referred to above.

SBA regulations require that you respond in writing, within 30 days of receipt of this letter, to the reasons set forth herein for the proposed termination.

In addition to your written response, (but not in lieu of such a response), you may request a meeting with me or my designee to discuss the proposed termination action. This Agency shall document and use any additional information gathered during any meetings held with a representative of WELBILT ELECTRONIC DIE CORP. during this 30 day period.

Your failure to provide this office with the written response required by our regulations, within 30 days of the receipt of this letter, will cause the immediate institution of further termination processing, unless you request and obtain a written extension from my office.

Sincerely,

Mervyn Shorr
Actg. District Director

MS:tl

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

R/A - Reg. II

SEP 27 1983

Mr. John Mariotta
President
Welbilt Electronic Die Corporation
595 Girard Avenue
Bronx, New York 10451

Dear Mr. Mariotta:

We are in receipt of your request for an extension of your firm's Fixed Program Participation Term (FPPT). We regret that due to administrative delays, we are unable to process all such requests prior to the expiration of the firm's original FPPTs.

In order to avoid a lapse in your firm's FPPT which would cause your firm to cease to be an 8(a) Program participant, the Small Business Administration is granting your firm an extension of its FPPT in the following manner: The extension granted will be equal to at least the period of time between the expiration of your original FPPT, and the date on which SBA completes the processing of your extension request. When SBA has taken final action on your request, your firm will receive, by certified mail, final notice of the length of the FPPT extension granted. Please be advised that this extension may be as short as SBA's completed processing date, if a longer extension is not determined by SBA to be warranted. In accordance with the Code of Federal Regulations, 13 C.F.R. 124.1-1(f)(i), your firm may receive only one extension of its FPPT.

By copy of this letter, we are notifying the Regional Administrator of our action. Our notice will ensure that your firm will remain eligible to receive contract awards at least until the date of final processing by SBA of your firm's FPPT extension request.

Sincerely,

H Robert S

for Henry T. Wilfong, Jr.
Associate Administrator
for Minority Small Business

Wedtech Corp.
595 Gerard Avenue, Bronx, N.Y. 10451 Tel: (212) 993-0500 Telex: NYK 147281

October 13, 1983

Mr. Audrey A. Rogers
Deputy Assistant Regional Administrator
Minority Small Business/COD
United States Small Business Administration
26 Federal Plaza - Room 29-118
New York, New York 10278

re: Advance Payment Accounts
Contract Nos. SB2-11-8(a)82C-241
SB2-11-8(a)82C-246

Dear Mr. Rogers:

This is in response to your letter addressed to John Mariotta, Chairman of the Board, WEDTECH CORP. (formerly known as "WELBILT ELECTRONIC DIE CORP."), dated October 4, 1983.

WEDTECH CORP. wishes to inform you that the revision of the Small Business Administration Liquidation Schedules for advances received under the abovementioned contracts would have a severe adverse impact to its financial condition, results of operations, and working capital requirements. The only cash flow generated by the operations of WEDTECH CORP. to finance the production of the contracts is progress payments received from the Federal Government. The loss of such progress payments would severely hamper WEDTECH CORP.'s production schedules.

Although WEDTECH CORP. raised $22,260,000 from an initial public offering of 1,900,000 shares of common stock on September 2, 1983, the proceeds were used for the repayment of certain indebtedness with the remainder earmarked for certain plant expansion and equipment acquisitions, as set forth separately on Exhibit "A" attached to and made a part of this letter.

Furthermore, the Securities and Exchange Commission's rules and regulations require any company to comply with the use of proceeds derived from a public offering as enumerated in its Prospectus. If WEDTECH CORP.

(continued)

were to use the proceeds from its public offering for purposes other than those stipulated in its Prospectus (a copy of which, dated August 25, 1983, is enclosed for your reference), it would be a clear violation of SEC law.

We trust that the data contained in this letter will satisfy your requirements and allow WEDTECH CORP. to remain on the original Liquidation Schedules for the repayment of these advances. Should you have any questions, please do not hesitate to communicate with us.

Thank you for your cooperation and attention to this matter.

Sincerely yours,

WEDTECH CORP.

Anthony Guariglia

Anthony Guariglia
Vice President and Controller

ag: s

Attachment - Exhibit "A"

cc: Mr. Peter P. Neglia
Mr. Edward Rose

EXHIBIT "A"

Net Proceeds to WEDTECH CORP.	$ 22,260,000
Less:	
- Repayment of United States Economic Development Administration loan	1,322,370
- Repayment of Bank Leumi Trust Company of New York loans which were guaranteed 90% by the EDA and assumed from Citibank	1,894,906
- Repayment of loans made to the Company in June, 1983, by banks	1,400,000
- Repayment of principal shareholders' loans	500,000
- Repayment of AccountsPayable and accrued expenses	5,200,000
- Payment of Underwriting expenses:	
Legal	311,000
Accounting	325,000
Printing	115,000
Filing Fees	75,000
Other	50,000
- Payment of cash in advance to vendors for the procurement of materials for the engine, cooling kits and suspension kits contracts	600,000
- Repayment of short-term notes	950,000
- Reserved for plant expansion and acquisition of machinery and equipment	9,500,000
- Working Capital Balance	16,724
	$ 22,260,000

WEDTECH'S MEMORANDUM IN SUPPORT OF CONTINUED PARTICIPATION IN THE SECTION 8(a) PROGRAM

Submitted by:

BIAGGI and EHRLICH
299 Broadway
New York, N.Y. 10007
(212) 233-8000

December 12, 1983

I. WEDTECH CANNOT BE DECERTIFIED AS A SECTION 8(a) PARTICIPANT SINCE IT WAS NEVER AFFORDED A HEARING ON THE MERITS.

In order to commence a decertification proceeding, procedural due process requires that an Order to Show Cause be served on the respondent company. 13 C.F.R. Section 124.10-4(a) (1983):

> Adjudicative proceedings are commenced by the issuance of an order to show cause. A copy of the order to show cause will be served upon each respondent.

No Order to Show Cause has ever been served on Wedtech by either the S.B.A., or any other designated party; nor has Wedtech's 8(a) status ever been challenged in any other forum. Therefore, as a matter of law, Wedtech's 8(a) certification continues in full force and effect.

As District Court Judge Green noted in Systems and Applied Sciences Corp. v Sanders, 544 F. Supp. 576 (D.D.C. 1982), stated:

> Prior to involuntary termination from the 8(a) program for any reason..., a hearing on the record must be provided.

Furthermore, regulations require that the Order to Show Cause contain a statement of facts and law explaining why the company is ineligible to participate in the program:

> The order to show cause shall be issued by S.B.A. and shall contain a statement of the matters of fact and law asserted by the S.B.A. to be the grounds upon which proceedings have been instituted, and the legal authority and jurisdiction under which a hearing is to be held. 13 C.F.R. Section 124.10-4(b) (1983)

Wedtech has never received a "statement of facts and law" in any form whatsoever.

Lastly, no administrative hearing has ever been conducted to determine whether Wedtech should be terminated from the Section 8(a) program; and absent an administrative decision to the contrary, there can be no question as to the continued force and vitality of Wedtech's status as an 8(a) member in good standing.

> Subsequent to the completion of such hearing, upon the record established therein, and after consideration of the initial decision of the Administrative Law Judge who has conducted the hearing, the AAMSB-COD shall render a final decision regarding the termination, for good cause of the 8(a) business concern's participation in the program. 13 C.F.R. Section 124.1-1(e)(3) (1983).

Wedtech shall remain a member of the Section 8(a) program unless and until an administrative law judge holds that it is unqualified for the Section 8(a) program and the Associate Administrator for Minority Small Business and Capital Ownership Development accepts the Administrative Law Judge's findings. 13 C.F.R. Section 124.1-1(e)(3) (1983). Therefore, since these procedures have not been followed Wedtech is still a Section 8(a) participant.

II. WEDTECH IS PROPERLY CERTIFIED AS A SECTION 8(a) PARTICIPANT IN THAT IT IS AN "ECONOMICALLY DISADVANTAGED" ENTERPRISE, AND ITS PRINCIPALS ARE "SOCIALLY DISADVANTAGED"

Regulations define "economically disadvantaged" as the following:

> "Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise

> system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area who are not socially disadvantaged." 13 C.F.R. 124.1-1(c)(4)(i)(1983) (Emphasis Added).

Mr. John Mariotta, the majority shareholder of Wedtech, is Hispanic, and thus, he is socially disadvantaged.

> In the absence of evidence to the contrary, the following individuals are considered socially disadvantaged: Black Americans; Hispanic Americans; Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians); Asian Pacific Americans (persons with origins from Japan, China, the Philipines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, Northern Mariana Islands, Laos, Cambodia, or Taiwan); and members of other groups designated from time to time by S.B.A. according to the procedures set forth at Section 124.1-1(c)(3)(iv) of this part. 13 C.F.R. 124.1(c)(3)(ii) (1983).

Wedtech is located in the South Bronx. During the last fifteen years residents and firms have departed for safer environs because arson and violent crime have made the locality dangerous. Hence, many financial institutions are reluctant to extend financing to South Bronx firms, and this is especially prevalent where the firm is minority controlled. These factors have impeded Mr. Mariotta's access to inexpensive credit, and thus, qualify him as economically disadvantaged. 13 C.F.R. 124.1-1(c)(4)(i) (1983).

Other defense contractors, who compete with Mr. Mariotta and Wedtech do not face the same problem. For example, Grumman is located in Bethpage, Long Island, and financial institutions view this area as secure for their investment. Thus, financial institutions are willing to provide capital to Grumman. Hence, this is another indication that Mr. Mariotta and Wedtech are economically disadvantaged.

Another factor which must be considered is size of the other firms. See Appendices A-N. Wedtech competes in a national market against such giants as General Dynamics, Rockwell, United Technology, Lockheed. See Appendices A-N. Sales and net income information for the last twelve months is indicative of how small Wedtech's market share is in comparison to its competitors.

Sales information for the twelve months ending 6/30/83:

	Sales
Grumman Corp.	$ 2,078,098,000
Rockwell	$ 7,828,900,000
Teledyne, Inc.	$ 2,861,600,000
Lockheed	$ 6,282,200,000
FMC Corp.	$ 3,481,392,000
General Dynamics	$ 6,983,200,000
United Technology	$14,098,902,000
Wedtech	$ 20,491,556*

* 1982

Net income figure for the twelve months ending 6/30/83:

	Net Income
Grumman Corp.	$ 97,284,000
Rockwell	361,400,000
Teledyne, Inc.	220,900,000
Lockheed	242,100,000
FMC Corp.	145,064,000
General Dynamics	250,300,000
United Technology	476,100,000
Wedtech	3,133,689*

* 1982

Wedtech's competitors have access to large financial resources. Moreover, some of Wedtech's competitors can borrow at the prime rate. See Appendix C. This gives Wedtech's competitors economic advantage in that they are able to bid lower on contracts due to the availability of less expensive financing. Indeed, without the S.B.A.'s assistance Wedtech would be unable to compete; therefore, Wedtech is economically disadvantaged within the meaning of 13 C.F.R. Section 124.1-1 (c)(4)(ii)(B)(1) (1983).

It is imperative that Wedtech have access to financing. Wedtech's business requires that it be able to retool continuously. Thus, without adequate financing Wedtech will be unable to compete, and the firm will perish.

Recently, Wedtech lost a defense contract to produce a three horse power standard military engine. The Defense Department lacked confidence that Wedtech would be able to finance the project. This is indicative of how the company is perceived. Because it is a minority firm located in the South Bronx, government and financial institutions believe Wedtech is an unacceptable risk.

It is incumbent upon the S.B.A. to prove that Mr. Mariotta and Wedtech are not economically disadvantaged. 13 C.F.R. 124.10-11(a) (1983). Mr. Mariotta and Wedtech were certified as economically disadvantaged, and until proven otherwise their status remains unchanged.

In addition, Wedtech meets the second criteria for 8(a) certification in that John Mariotta, a principal shareholder in the company, is "socially disadvantaged" within the meaning of applicable rules and regulations.

In the Section 8(a) program the term socially disadvantaged means:

> "Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their individual qualities."

15 U.S.C.A. Section 637(a)(5) (Supp. 1983). In addition, the regulations create a rebuttable presumption that a Hispanic American is socially disadvantaged. 13. C.F.R. Section 124.1-1(c)(3)(ii) (1983).

Mr. John Mariotta is a Puerto Rican. He was born and raised in the South Bronx. Moreover, Mr. Mariotta attended a vocational high school because he lacked the English skills necessary for an academic high school. Mr. Mariotta still works in the South Bronx. Consequently, because of his background and the location of his job Mr. Mariotta is discriminated against. It is the S.B.A.'s duty and burden to establish that Mr. Mariotta is no longer socially disadvantaged. 13 C.F.R. 124.10-11(a) (1983). Since the S.B.A. has not demonstrated or attempted to demonstrate that Mr. Mariotta is not socially disadvantaged, his status remains unchanged.

III. HISTORY AND PURPOSE OF SECTION 8(a) PROGRAM.

The disturbances of the 1960's brought to the forefront the social and economic problems that plagued minorities. One of the factors that contributed to the disorders was the paucity of minority owned businesses. Thus, one commentator observed:

> In the late 1960's, leaders of both major political parties increasingly focused on the need to provide the disadvantaged with opportunities for economic development. Combatting poverty was a highly visible issue to the Democratic-controlled Congress...

Levinson, A Study of Preferential Treatment: The Evolution of Minority Business Enterprise Assistance Programs, 49 Geo. Wash. L. Rev. 61, 64 (1980).

Congress responded by amending the Economic Opportunity Act to provide assistance to enterprises in urban and rural areas. Pub. L. No. 90-222, 81 Stat. 672 (1967) (repealed 1974). President Nixon tackled the problem by promulgating a series of Executive Orders. Exec. Order No. 11458, 3 C.F.R. Section 779 (1969); Exec. Order No. 11518, 3 C.F.R. Section 907 (1967); Exec. Order No. 11625, 3 C.F.R. Section 616 (1971).

In the first order President Nixon created the Office of Minority Business Enterprise to stimulate minority businesses. Exec. Order No. 11458, 3 C.F.R. Section 779 (1969). Pursuant to the second order minority businesses were to be more active in federal procurement programs. Exec. Order No. 11518, 3C.F.R. Section 907 (1976). The last order provided financial assistance to organizations that provided management and technical assistance to minority enterprises. Exec. Order No. 11625, 3 C.F.R. Section 616 (1971).

During this period the Small Business Administration (SBA) developed the Section 8(a) program to assist "social and economically disadvantaged" persons. S. Rep. No. 1070, 95th Cong., 2nd Sess. 7 (1978), reprinted in 1978 U.S. Code Cong. & Ad. News 3835, 3842. The purpose of the Section 8(a) program is to develop viable minority owned businesses which can endure the rigors of the free enterprise system. Minority Business Legal Defense and Education Fund, Inc. v Small Business Administration, 537 F. Supp. 37, 38 (D.D.C. 1982).

To qualify for the Section 8(a) program at least 51% of the stock must be owned by socially and economically disadvantaged individuals. 15 U.S.C.A. Section 637(a)(4) (Supp. 1983). Socially disadvantaged means an individual has been subjected to ethnic, racial or cultural discrimination. 15 U.S.C.A. Section

637(a)(5)(Supp.1983). Economically disadvantaged means a socially disadvantaged person has been unable to secure sufficient credit or capital due to his social disadvantage. 15 U.S.C.A. Section 637(a)(6) (Supp. 1983). Additionally, the S.B.A. must determine that the applicant-company has the ability to perform any contracts which it is awarded, and the applicant-company must have the ability after its completion of the Section 8(a) program to compete in the private sector. 15 U.S.C.A. Section 637(a)(7) (Supp. 1983). In 1975 the House Subcommittee on S.B.A. Oversight and Minority Enterprise stated:

> "The effects of past inequities stemming from racial prejudice have not remained in the past. The Congress has recognized the reality that past discriminatory practices have, to some degree, adversely affected our present economic system."

H.R. Rep. No. 468, 94th Cong., 1st. Sess. 1-2 (1975).

In the late 1970's the Senate conducted an investigation concerning the Section 8(a) program and found:

> "Reports prepared by the General Accounting Office and investigations conducted by both the executive and legislative branches have disclosed that the Section 8(a) program has fallen far short of its goal to develop strong and growing disadvantaged small businesses. Only 33 of the more than 3,700 firms which have participated in the program have both completed the Section 8(a) program and are known to have a positive net worth."

S. Rep. No. 1070, 95th Cong., 2nd Sess. 7 (1978), reprinted in 1978 U.S. Code Cong. and Ad. News 3835, 3842.

IV. CONCLUSION

The S.B.A. has not complied with the decertification procedures. Therefore, the S.B.A. may not terminate Wedtech's Section 8(a) participation. Furthermore, John Mariotta is still socially disadvantaged. Consequently, John Mariotta and Wedtech still meet the two pronged test of being socially and economically disadvantaged. Without the S.B.A.'s support Wedtech is only another firm from the South Bronx. The Section 8(a) program was formulated to assist enterprises like Wedtech. The South Bronx has suffered from narcotics, arson and violent crime. Wedtech has fought diligently to establish a reputation, and assist the community. Wedtech is a sterling example of what a hard working minority can accomplish. But, Wedtech needs the S.B.A.'s assistance so that the firm will be able to compete against the giants in the industry. Therefore, terminating Wedtech while it is still economically disadvantaged is inequitable, and contrary to the policy of the Section 8(a) program.

Form Approved
OMB No. 100-R-0081

PERSONAL FINANCIAL STATEMENT

As of December 17, 19 83

Return to:
Small Business Administration

For SBA Use Only
SBA Loan No.

Complete this form if 1) a sole proprietorship by the proprietor; 2) a partnership by each partner; 3) a corporation by each officer and each stockholder with 20% or more ownership; 4) any other person or entity providing a guaranty on the loan.

Name and Address, Including ZIP Code *(of person and spouse submitting Statement)*

John Mariotta
100 Woodford Road
Scarsdale, New York 10583

SOCIAL SECURITY NO. 097-24-0242

Business *(of person submitting Statement)*

WEDTECH CORP.

This statement is submitted in connection with S.B.A. loan requested or granted to the individual or firm, whose name appears below:

Name and Address of Applicant or Borrower, Including ZIP Code

WEDTECH CORP.
595 Gerard Avenue
Bronx, New York 10451

Please answer all questions using "No" or "None" where necessary

ASSETS

Cash on Hand & In Banks	$ 500,000.00
Savings Account in Banks	440,000.00
U. S. Government Bonds	-0-
Accounts & Notes Receivable	-0-
Life Insurance-Cash Surrender Value Only	
Other Stocks and Bonds *(Describe - reverse side - Section 3)*	90,000.00
Real Estate *(Describe - reverse side - Section 4)*	260,000.00
Automobile - Present Value	
Other Personal Property *(Describe - reverse side - Section 5)*	
Other Assets *(Describe - reverse side - Section 6)*	20,000.00
Total	$ 1,330,000.00

Excludes 55.3% interest
in WEDTECH CORP.

LIABILITIES

Accounts Payable	$
Notes Payable to Banks *(Describe below - Section 2)*	550,000.00
Notes Payable to Others *(Describe below - Section 2)*	
Installment Account *(Auto)* Monthly Payments $	
Installment Accounts *(Other)* Monthly Payments $	
Loans on Life Insurance	
Mortgages on Real Estate *(Describe - reverse side - Section 4)*	150,000.00
Unpaid Taxes *(Describe - reverse side - Section 7)*	
Other Liabilities *(Describe - reverse side - Section 8)*	
Total Liabilities	700,000.00
Net Worth	610,000.00
Total	$ 1,330,000.00

Section 1. Source of Income

(Describe below all items listed in this Section)

Salary	$ 100,000.00
Net Investment Income	45,000.00
Real Estate Income	
Other Income *(Describe)**	

CONTINGENT LIABILITIES

As Endorser or Co-Maker	$ --
Legal Claims and Judgments	--
Provision for Federal Income Tax	960,000.00
Other Special Debt	

Description of Items listed in Section I

*Not necessary to disclose alimony or child support payments in "Other Income" unless it is desired to have such payments counted toward total income.

Life Insurance Held *(Give face amount of policies - name of company and beneficiaries)*

SUPPLEMENTARY SCHEDULES

Section 2. Notes Payable to Banks and Others

Name and Address of Holder of Note	Amount of Loan		Terms of Repayments	Maturity of Loan	How Endorsed, Guaranteed, or Secured
	Original Bal.	Present Bal.			
Bank Leumi Trust Company of New York loan to WEDTECH CORP.	$ 550,000	$ 550,000	$ Demand	----	Personally secure by real estate an all other persona holdings.

Section 3. Other Stocks and Bonds: Give listed and unlisted Stocks and Bonds *(Use separate sheet if necessary)*

No. of Shares	Names of Securities	Cost	Market Value Statement Date Quotation	 Amount
7,500	New York National Bank	$ 75,000.00	----	---
1,500	Triad Corp.	15,000.00	---	---

Section 4. Real Estate Owned. *(List each parcel separately. Use supplemental sheets if necessary. Each sheet must be identified as a supplement to this statement and signed). (Also advises whether property is covered by title insurance, abstract of title, or both).*

Title is in name of
John and Jennie Mariotta

Type of property
Residence

Address of property (City and State)
100 Woodford Road
Scarsdale, New York 10583

Original Cost to (me) (us) $ 260,000.00
Date Purchased December 5, 1981
Present Market Value $ 260,000.00
Tax Assessment Value $ 260,000.00

Name and Address of Holder of Mortgage (City and State)
Chase Manhattan Bank, N. A.
80 Pine Street - 3rd Floor
New York, New York 10081

Date of Mortgage December 5, 1981
Original Amount $ 149,000.00
Balance $ 149,000.00
Maturity 2,011
Terms of Payment 2,321.93/month

Status of Mortgage, i.e., current or delinquent. If delinquent describe delinquencies

Section 5. Other Personal Property. *(Describe and if any is mortgaged, state name and address of mortgage holder and amount of mortgage, terms of payment and if delinquent, describe delinquency.)*

Section 6. Other Assets. *(Describe)*

Personal Property

Section 7. Unpaid Taxes. *(Describe in detail, as to type, to whom payable, when due, amount, and what, if any, property a tax lien, if any, attaches)*

There is a total liability of $960,000.00 in taxes payable for Federal and State taxes due April 15, 1984. These funds have been set-up in a separate bank account.

Section 6. Other Liabilities. *(Describe in detail)*

(I) or (We) certify the above and the statements contained in the schedules herein is a true and accurate statement of (my) or (our) financial condition as of the date stated herein. This statement is given for the purpose of: *(Check one of the following)*

☐ Inducing S.B.A. to grant a loan as requested in application, of the individual or firm whose name appears herein, in connection with which this statement is submitted.

☐ Furnishing a statement of (my) or (our) financial condition, pursuant to the terms of the guaranty executed by (me) or (us) at the time S.B.A. granted a loan to the individual or firm, whose name appears herein.

Signature

Signature

December 17, 198
Date

JOHN MARIOTTA'S MEMORANDUM IN SUPPORT OF CONTINUED PARTICIPATION IN THE 8(a) PROGRAM

Submitted by:

BIAGGI & EHRLICH
299 Broadway
New York, N.Y. 10007
(212) 233-8000

December 28, 1983

I. CASE LAW SUPPORTS JOHN MARIOTTA'S CONTINUED PARTICIPATION IN THE 8(a) PROGRAM

The mere fact that John Mariotta has substantial holdings in Wedtech does not change the fact that John Mariotta remains economically disadvantaged within the meaning of the 8(a) program. The case law on this topic holds that the relative net worth of the minority applicant is not a basis for denying him 8(a) status where the net assets of the individual are illiquid. In addition, net worth is to be viewed in light of its relation to the business in which the firm competes.

In BDM Service Company v S.B.A., No. 80-2671 (D.D.C. Filed Nov. 14, 1980), 118 O.D. 1611, the Court held that a company may still be economically disadvantaged notwithstanding the fact that the minority individual has a substantial net worth. "Economic disadvantage" is determined in light of the competition that the 8(a) company faces in the marketplace. Consequently, the "net worth" of the minority individual--even if substantial--will not render the 8(a) company ineligible to participate in the program where the capital requirements needed by the company to compete cannot be met solely on the basis of the minority individual's holdings. If necessary financing cannot be obtained on the basis of the net worth of the minority individual, the company may still be deemed "economically disadvantaged". Moreover, the court observed that Congress intended that small business should participate in lucrative and complex contracts, and it held that even a large net worth would not necessarily exclude one from the program.

Under BDM Service Company, supra., John Mariotta would be considered a qualified 8(a) participant. Mr. Mariotta competes in an industry with high fixed capital costs, (See Exhibits A & B), and Mr. Mariotta's net worth is insufficient to provide needed financing for capital expansion. Additionally, Mr. Mariotta's assets are inconsequential when compared to his competitors. The Court in BDM Services Company, observed that the purpose of 8(a) was to develop strong small business and to let small concerns participate in large contracts., Therefore, Mariotta's continued participation in the 8(a) program would effectuate the intent of Congress.

II. THE LEGISLATIVE HISTORY OF PUBLIC LAW 95-507 SUPPORTS JOHN MARIOTTA'S CONTINUED PARTICIPATION IN THE 8(a) PROGRAM

The legistlative history of Public Law 95-507 is elucidating, because it clarifies various points concerning economic disadvantage. The Senate Report states:

> For existing small business concerns, the S.B.A. should consider among other things, the position of the business relative to other businesses in the same industry and the liquid net assets owned by the individual based on the capital generally required to maintain and expand the small business in the industry. (Emphasis Added)

S. Rep. 1070, 95th Cong., 2nd Sess. p. 15 (1978).

Significantly, the Senate Report discussed the distinction between liquid and illiquid assets. The distinction is vital. The ability to secure adequate financing can rest upon the type of assets owned. Financial institutions are generally unwilling to extend credit, where the assets being offered for collateral are difficult to convert into cash, are difficult to appraise, or are otherwise unaccepatable as collateral. John Mariotta's assets are illiquid. Therefore, Mr. Mariotta's assets could not be readily converted into cash. Moreover, Mr. Mariotta's assets could not provide him with the funds which are necessary to maintain his business. Thus, this is another indication which demonstrates that Mr. Mariotta is economically disadvantaged.

The Senate Report was wary of denying participation to minority group members who had accumulated assets. The Senate Report declares:

> In addition, particularly as it relates to the economic status of the applicant, the S.B.A. shall develop standards, along major industry lines which recognize the historic past discrimination of minorities as a group in the free enterprise system. The standards must not deny admission to the 8(a) program to minority applicants merely because they have managed to accumulate savings, acquire a quality education or have accumulated other assets (such as homes, cars, etc.), which they may or may not be able to utilize as collateral to launch or sustain a business operation. Indeed, such assets may be a prerequisite for the development of a viable business. (Emphasis Added)

S. Rep. 1070, 95th Cong., 2nd Sess. p 15 (1978). Importantly, the Senate Report stressed the need to include minority group members who had obtained success in life. Moreover, because some minority group members were prosperous this should not compel their exclusion from the 8(a) program. Mr. Mariotta's net worth should not be employed against him, because the Senate Report's states that the accumulation of some assets may indicate the potential to operate a successful business which is a requirement of the 8(a) program.

The legislative history recognized that the onus of discrimination is difficult to erase. The House Subcommittee on S.B.A. Oversight and Minority Enterprise noted:

> The effects of past inequities stemming from racial prejudice have not remained in the past. The Congress has recognized the reality that past discriminatory practices have, to some degree adversely affected our present economic system.

H.R. Rep. 468, 94th Cong., 1st Sess. p. 1-2 (1975). Therefore, caution should be exercised to insure that a worthy 8(a) program participant is not deprived of the opportunity to maintain a viable business.

The Senate Report noted that in some industries, personal savings were insufficient to initiate or maintain enterprises.

Some industries are capital intensive, and thus, require tremendous amounts of capital expenditure which a majority shareholder may be unable to afford. Consequently, the S.B.A.'s intervention is necessary to insure that the minority business will have enough capital to expand.

III. JOHN MARIOTTA IS ECONOMICALLY DISADVANTAGED UNDER THE S.B.A. STATUTES AND REGULATIONS

The term economically disadvantaged in the context of the 8(a) program has a special meaning. Thus, the definition of economically disadvantaged is the following:

> Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the

> degree of diminished credit and capital opportunities the Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individual.

15 U.S.C.A. 637(a)(6) (Supp. 1983)

The phrase economically disadvantaged is refined further by the regulations promulgated by the Small Business Administration. The regulations state:

> Economic Disadvantage - Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area who are not socially disadvantaged.
>
> In determining the degree of diminished credit and capital opportunities of a socially disadvantaged individual consideration shall be given:
>
> With respect to both the disadvantaged individual and the applicant concern with which he or she is affiliated, to the following factors, including but not limited to:
> (1) Personal and business assets
> (2) Personal and business net worth; and
> (3) Personal and business income and profit(s)

13 C.F.R. 124.1-1(c)(4)(A)(3) (1983).

The regulations define socially disadvantaged as follows:

> Socially disadvantaged individuals are those individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. The social disadvantage of individuals must stem from circumstances beyond their control.

> In the absence of evidence to the contrary, the following individuals are considered socially disadvantaged: Black Americans; Hispanic Americans, Native Americans (American Indians, Eskimos, Aleuts or Native Hawaiians); Asian Pacific Americans (persons with origins from Japan, China, The Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, Northern Mariana Islands, Laos, Cambodia, or Taiwan); and members of other groups designated from time to time by S.B.A. according to the procedures set forth at Section 124.1-1(c)(3)(iv) of this part. 13 C.F.R. 124.1-1(c)(3)(i)-(ii) (1983).

Since John Mariotta is Puerto Rican, he is socially disadvantaged within the meaning of the statute.

The SBA has recognized that determining whether someone is economically disadvantaged is a complex issue. Thus, prior to the codification of the SBA program the SBA defined economically disadvantaged by assessing various fctors. The SBA defined economically disadvantaged as follows:

> In determining whether one is socially or economically disadvantaged, reliance should not ordinarily be placed on a single factor but on a composite of many factors: financial history of the individual along with the general pattern of his life, his opportunities education, social and economic. By looking at this composite, the Agency can better decide whether an individual, because of his background, has been unable to obtain financing or other business assistance of a quality or quantity similar to that available to the average entrepreneur in the economic mainstream.

S.B.A. Opinion Digest #87 1/8/72. Importantly, an individual's net worth was only one factor to be considered in determining whether he was economically disadvantaged.

The statute and regulations emphasize a socially disadvantaged individual is unable to secure sufficient credit to enable him to compete in the free market. Section 15 U.S.C.A. Section 637 (a)(6) (Supp. 1983). Thus, the purpose of the 8(a) program is to enable economically disadvantaged individuals to develop enterprises which will be able to successfully compete without government assistance. Minority Business Legal Defense and Education Fund, Inc. v. S.B.A., 557 F. Supp. 37, 38 (D.D.C. 1982).

Mr. John Mariotta is economically disadvantaged. Mr. Marriotta is a Puerto Rican from the South Bronx, and thus, he is discriminated against by financial institutions. Some financial institutions are unwilling to extend to Mr. Mariotta the required financing because they lack faith in him. Recently, Wedtech lost the opportunity to build a standard three horse power engine for the military, because it was believed that Wedtech could not finance the project. But, Mr. Mariotta's competitors are in a different position. See Exhibits A & B. United Technology is a multi-billion dollar corporation, which has access to inexpensive financing. Thus, United Technology would not be rejected by the military for a defense contract on the basis that United Technology was unable to finance the contract. Therefore, the lack of diminished credit opportunities would qualify Mr. Mariotta as economically disadvantaged. 13 C.F.R. Section 124.1 - 1(c) (4)(i) (1983).

John Mariotta's personal assets classify him as economically disadvantaged. Mr. Mariotta's assets are illiquid. His principal asset is Wedtech stock which , at present, is regarded by financial institutions as volatile. Recently Wedtech went public, and the market for it's shares has not had the opportunity to stabilize. Hence, Mr. Mariotta is illiquid, and significantly, this factor indicates that Mr. Mariotta's wealth may be overestimated. Indeed, to appreciate the illiquidity of Wedtech stock, the following factors must be taken into consideration. Wedtech does not pay a dividend, nor does Wedtech intend to pay a dividend in the near future. Moreover, as recently as 1981 Wedtech had a net loss per share of twenty-four cents. In 1982, Wedtech had a net income per share of seventy-two cents; and for the four month period ending April 1983, Wedtech had a net income per share of thirty-one cents. (See Exhibit C.) This is indicative of a volatile stock, which will fluctuate in price. Consequently, it is inequitable to estimate Mr. Mariotta's worth on the basis of a volatile stock. See 13 C.F.R. 124.1-1(c)(4)(a)(1) -(2)(1983).

IV CONCLUSION: PARTICIPATION IN THE 8(a) PROGRAM SHOULD CONTINUE

Legislative history and case law provides that an individual who is prosperous may be allowed to participate in the 8(a) program. Mr. Mariotta competes in an industry which requires a tremendous amount of capital investment. Moreover, the type of assets owned by Mr. Marriotta are deceiving because Wedtech stock does not have an established market. Consequently, Mr. Mariotta's net worth is vastly overestimated. The 8(a) progam was meant to assist entrepreneurs like Mr. Marriotta, and thus, it would be consistent with established policy to continue Mr. Mariotta's membership in the 8(a) program.

233 Broadway
New York, N.Y. 10007

212-233-8000

BERNARD G. EHRLICH

RICHARD M. BIAGGI
PAUL W. BARNARD
JAMES T. CLERKIN
MARSHAL COLEMAN
ANTHONY P. DELORENZO*
STEPHEN E. SPEISER
ANNETTE D. STOIA

*ADMITTED IN NEW YORK & NEW JERSEY

NEW JERSEY OFFICE
12 SYLVAN AVENUE
ENGLEWOOD CLIFFS, N. J. 07632
(201) 592-6020

MARIO BIAGGI
OF COUNSEL

December 22, 1983

Honorable Peter Neglia
Regional Director
Small Business Administration
26 Federal Plaza
New York, New York

Dear Mr. Neglia:

In reference to the critical questions raised by the SBA concerning WEDTECH and its continued participation in the 8a program, we respectfully submit the following in response to the questions raised.

QUERY 1. The alleged failure of Wedtech to develop business outside of the 8a program.

We respectfully submit for your consideration the following new business activities which are outside of the 8a program, which are the direct result of actions by either the officers, staff or employees of Wedtech:

1. Manufacture of Armoured Personnel Carriers for the Israeli Defense Forces.

2. Manufacture of RPV's for foreign military sales.

3. Manufacture of M113 kits for sale to the U.S. military, German Defense Forces, and Israeli Defense Forces.

4. Manufacture of spare parts and support equipment for Mine Plows as subcontractors for General Dynamics Corp.

5. Manufacture and assembly of Rotary engines (marine pumps, generators, etc.) for non-military sales world-wide.

6. Manufacture and sales of military standard engine for non-military sales.

7. Containers for United States Post Office.

8. Manufacture of machine precision parts for non-military commercial sales.

9. Sale of cooling Kits for non-8a sales.

10. Joint Venture to manufacture Sterling engines with non-8a R & D Corp, Albany, N.Y.

11. Manufacture and sale to the United States Navy of 1-KW engine.

12. Sub-contract for Martin Marietta Corp. - machine precision parts.

13. Sub-contractor for Rockwell Industries - machine precision parts.

In addition, the company has had initial contact explorations in reference to the coating process with the following companies:

Rockwell Industries:
Sprague Electric
Union Carbide
General Electric
Feature Controls
Raytheon Power Tube
Cherry Electrical Products
Chromallog
Data - General
Posi-Seal International
Israeli Aircraft - Pratt Whitney
Hewlett/Packard
Xerox
Santo
Motorola
Rogers Corporation
AMP. Corp.

Quadrant Glass Company Ltd. U.K.
Windsor Plastics
Royal Dutch Shell - Netherlands
Netherland Exon - Netherlands
Phillips International - Netherlands
Siemein - G. D.

In order to fully develop and finance these expensive programs, a minority company like Wedtech needs the financial support of the SBA in order to ensure its cash flow and financial stability.

QUERY 2. MINORITY CONTROL OF BOARD OF DIRECTORS: The following people presently constitute Board of Directors of the corporation:

Fred Moss, Fred Neuberger, John Mariotta, Mario Moreno and Al Rivera. Of the above, three are minorities.

QUERY 3. CURRENT FINANCIAL STATUS: The following is the current financial posture of Wedtech.

1. Wedtech has presently the sum of SEVEN MILLION DOLLARS ($7,000,000.00) in CD's and Treasury Bills.

a. Wedtech has ONE MILLION DOLLARS ($1,000,000.00) which is restricted for lease hold improvement of a new manufacturing Building.

b. ONE MILLION DOLLARS ($1,000,000.00) is restricted as a guarantee on a loan participation.

c. Wedtech has a FOUR MILLION DOLLARS ($4,000,000.00) line of credit with Bank Leumi guaranteed by Wedtech collateral.

2. SUMMARY:

As a result of the above, Wedtech's present liquid position is ONE AND ONE-HALF MILLION DOLLARS ($1,500,000.00).

QUERY 4. CURRENT FINANCIAL POSTURE OF JOHN MARIOTTA CONSIDERATION FOR STOCK TRANSFER AND EVIDENCE OF STOCK TRANSFER.

The evidence of the transfer of stock shares to John Mariotta by the other principals in order to ensure ownership is the registration of the stock powers with the transfer agent which will also be evidenced by the issue of new stock certificates.

In reference to John Mariotta and his presently financial status Mr. Mariotta is restricted from selling more than one percent of his current holdings every 90 days. Even this is not a viable option because the market has shown a minimal support for the issue, thus making it virtually unrealistic to sell any shares because any large sale of stock would collapse the market.

Immediately after the public issue, a early meeting of interested parties was held and a presentation was made indicating that for the company to survive, it must continue in the 8a Program for a minimum of eight years. It its early development, it was concluded that it was virtually impossible for the company to compete with the well established defense contractors who could purchase at a lower price and "low ball contracts" in order to keep certain facilities operating even at a loss.

Once the determination was made that the company could not survive outside the 8a Program, it was a small step forward to reach the future legal conclusion that transfers of stock would have to be made to Mr. Mariotta in order to reconstitute his fifty-one percent (51%) ownership of the company. The understanding between the parties was that in order to avoid financial strangulation of the corporation, Mr. Mariotta would make payments to the parties for the stock transfer by virtue of a private agreement between the interested parties. The simple consideration which thus satisfies all the requirements of the Business Corporation Law was for value received by the interested parties.

The result of this transfer upon Mr. Mariotta is an obligation presently owed and payable over a period of three (3) years to the transferees of the stock.

We have previously conveyed to you by Memorandums of Law setting forth very clearly the current case law indicating that any attempt to remove a certified company from participation in the 8a Program cannot be done without a formal hearing. I am certain that all parties are in accord with the fact that no such hearing has taken place and should such a hearing take place, Wedtech would clearly submit substantial evidence that Mr. Mariotta is still a fifty-one percent (51%) shareholder in said corporation. As you more than any individual, have contributed to the survival and later success of this company, we would respectfully urge you to support our contention and again assist the company in returning and participate in the 8a Program.

On behalf of Welbilt-Wedtech, please accept our sincere appreciation to you and your staff for the guidance and assistance that you have given both companies.

Respectfully submitted
for Wedtech Corporation,

Bernard G. Ehrlich

BGE:GT

December 27, 1983

Mr. John Mariotta
WEDTECH CORPORATION
F/K/A Welbilt Electronic Tool & Die Corporation
595 Gerard Avenue
Bronx, New York 10451

Dear Mr. Mariotta:

We thank you for your recent submissions in connection with the issues raised in the New York District Office letter to you dated October 21, 1983.

Unfortunately, our preliminary review shows that additional information is needed to fully satisfy the request made in the referenced letter. Please submit the following:

1. A statement from Underwriting Counsel or other documentation confirming that the stock transfers as noted in the submitted stock power documents were made in full compliance with the Rules and Regulations of the Securities and Exchange Commission.

2. Copies of agreements between the parties participating in the stock transfer. Please refer to letter from Bernard Erlich dated December 22, 1983.

3. Copies of corporate documents, including board minutes, substantiating change in composition of the board.

4. A new 8(a) Business Eligibility Statement (SBA Form 1010B). Copy is enclosed for your convenience.

5. Copies of all shareholder agreements, if any, including voting trusts, employment contracts, and joint venture agreements, as well as management or consulting agreements your company may have with other firms. If none exist , then a statement to that effect will satisfy this requirement.

6. The corporate kits of Welbilt/Wedtech Corporation, as well as those of subsidiaries and affiliates, must be available for review by the Legal Division of the New York District Office.

Thank you for your usual cooperation.

Sincerely,

Peter P. Neglia
Regional Administrator

Enclosure

cc:
Bernard Erlich, Esq.

AR/EB
264-9480

SQUADRON, ELLENOFF, PLESENT & LEHRER
551 FIFTH AVENUE
NEW YORK, N.Y. 10017
(212) 661-6500

*HOWARD M. SQUADRON
*THEODORE ELLENOFF
STANLEY PLESENT
*STANLEY I. LEHRER
ALLEN A. STEIN
ARTHUR H. SEIDMAN
HOWARD S. SOHN
*** MICHAEL R. KLEINERMAN
HARVEY HOROWITZ
NEAL M. GOLDMAN
IRA LEE SORKIN
ARTHUR D. STOUT III
BLADE R. METCALF
JONATHAN L. SULDS

JUDITH R. COHEN
JAMES M. STEVRALIA
JEFFREY W. RUBIN
* STUART M. STEIN
** EUGENE C. GAVENCHAK
HOWARD M. TOPAZ
DAVID L. KOVACS
STUART H. SONDELL
RHODA L. CLARY
PHILIP E. ALTMAN
JONATHAN D. GELBERG
ANDREW A. HIMELMAN
ANN S. SIEGEL
RANDI E. ZELLER

*A PROFESSIONAL CORPORATION

* ALSO MEMBER OF FLORIDA BAR
** ALSO MEMBER OF MASSACHUSETTS BAR
*** ALSO MEMBER OF OHIO BAR

COUNSEL
DAVID MILLER
—
AUTOMATIC
TELECOPIER
(212) 557-6886
—
CABLE
ESSCELAW
—
TELEX
220644

January 3, 1984

Mr. Peter Neglia
Regional Director
Small Business Administration
26 Federal Plaza
New York, New York

Re: Sale of Shares of Wedtech Corp. to John Mariotta

Dear Mr. Neglia:

We are counsel to Wedtech Corp. (the "Company").

We are familiar with that certain Stock Purchase Agreement dated December 27, 1983 by and among Messrs. Richard Biaggi, Bernard G. Ehrlich, Anthony Guariglia, Mario Moreno, Fred Neuberger, Lawrence Shorten and John Mariotta ("Stock Purchase Agreement"), pursuant to which Messrs. Biaggi, Ehrlich, Guariglia, Moreno, Neuberger and Shorten have sold, assigned and transferred certain shares of the Company's common stock to Mr. Mariotta. Mr. Mariotta has agreed that he is acquiring his interest in said shares for investment and not with a view to distribution or resale thereof.

You have requested our opinion with respect to whether the sale of the Company's common stock pursuant to the Stock Purchase Agreement requires registration of such shares pursuant to the Securities Act of 1933, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

In this connection, we have examined such documents, including the Stock Purchase Agreement, and questions of law as we have deemed necessary or appropriate for the purposes of this opinion. In our examination, we have assumed the genuineness of all documents submitted to us.

Based upon the foregoing, we are of the opinion that the sale of shares of the Company's common stock by Messrs. Biaggi, Ehrlich, Guariglia, Moreno, Neuberger and Shorten to Mr. Mariotta pursuant to the Stock Purchase Agreement does not require registration under the Securities Act of 1933, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

This opinion is rendered solely for the benefit of the Small Business Administration, and may not be relied upon by any other party without the prior written consent of this firm.

Very truly yours,

Squadron, Ellenoff, Plesent & Lehrer

SQUADRON, ELLENOFF, PLESENT & LEHRER
551 FIFTH AVENUE
NEW YORK, N.Y. 10017
(212) 661-6500

*HOWARD M. SQUADRON
*THEODORE ELLENOFF
STANLEY PLESENT
*STANLEY I. LEHRER
ALLEN A. STEIN
ARTHUR H. [illegible]
HOWARD B. [illegible]
†††MICHAEL R. [illegible]
HARVEY HOROWITZ
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JONATHAN L. SULDS

JUDITH R. COHEN
JAMES H. [illegible]
JEFFREY W. RUBIN
†STUART M. STEIN
††EUGENE C. [illegible]
HOWARD M. TOPAZ
DAVID L. KOVACS
STUART M. [illegible]
RHODA L. CLARY
PHILIP C. ALTMAN
JONATHAN D. [illegible]
ANDREW A. [illegible]
ANN S. SIEGEL
RANDI E. ZELLER

*A PROFESSIONAL CORPORATION

†ALSO MEMBER OF FLORIDA BAR
††ALSO MEMBER OF MASSACHUSETTS BAR
†††ALSO MEMBER OF OHIO BAR

COUNSEL
DAVID MILLER

AUTOMATIC
TELECOPIER
(212) 687-[illegible]

CABLE
[illegible]

TELEX
220844

January 4, 1984

Mr. Peter Neglia
Regional Director
Small Business Administration
26 Federal Plaza
New York, New York

Re: Sale of Shares of Wedtech Corp.
to John Mariotta

Dear Mr. Neglia:

We are counsel to Wedtech Corp. (the "Company").

We are familiar with the certain Stock Purchase Agreement dated December 27, 1983 by and among Messrs. Anthony Guariglia, Mario Moreno, Fred Neuberger, Lawrence Shorten and John Mariotta ("Stock Purchase Agreement I"), pursuant to which Messrs. Guariglia, Moreno, Neuberger and Shorten have sold, assigned and transferred certain shares of the Company's common stock to Mr. Mariotta, and that certain Stock Purchase Agreement dated December 27, 1983 by and among Messrs. Richard Biaggi, Bernard G. Ehrlich and John Mariotta ("Stock Purchase Agreement II"), pursuant to which Messrs. Biaggi and Ehrlich have sold, assigned and transferred certain shares of the Company's common stock to Mr. Mariotta. Mr. Mariotta has represented in each of Stock Purchase Agreement I and Stock Purchase Agreement II that is acquiring his interest in said shares for investment and not with a view to distribution or resale thereof.

You have requested our opinion with respect to whether the sales of the Company's common stock pursuant to Stock Purchase Agreement I and Stock Purchase Agreement II have been made in compliance with the Securities Act of 1933, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

Mr. Peter Neglia
Page 2
January 4, 1984

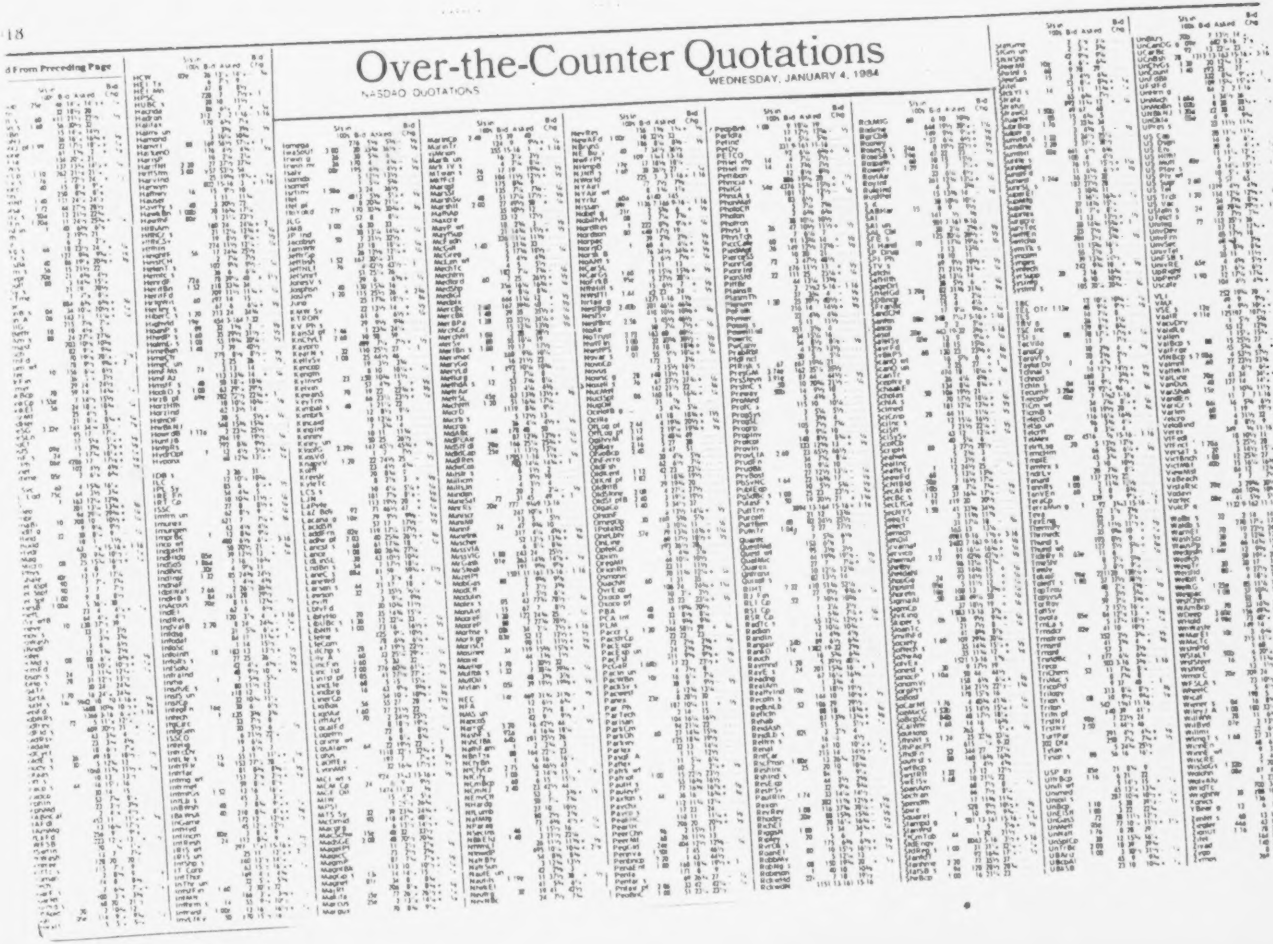
In this connection, we have examined such documents, including Stock Purchase Agreement I and Stock Purchase Agreement II, and questions of law as we have deemed necessary or appropriate for the purposes of this opinion. In our examination, we have assumed the genuineness of all documents submitted to us.

Based upon the foregoing, we are of the opinion that the sales of shares of the Company's common stock by Messrs. Guariglia, Moreno, Neuberger and Shorten to Mr. Mariotta pursuant to Stock Purchase Agreement I and by Messrs. Biaggi and Ehrlich to Mr. Mariotta pursuant to Stock Purchase Agreement II have been made in compliance with the Securities Act of 1933, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

This opinion is rendered solely for the benefit of the Small Business Administration, and may not be relied upon by any other party without the prior written consent of this firm.

Very truly yours,

Squadron, Ellenoff, Plesent & Lehrer



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Over-the-Counter Quotations

NASDAQ QUOTATIONS

WEDNESDAY, JANUARY 4, 1984

Biaggi and Ehrlich
ATTORNEYS AT LAW
299 Broadway
New York, N.Y. 10007
212-233-8000

BERNARD G. EHRLICH

RICHARD M. BIAGGI
PAUL W. BARNARD
JAMES T. CLERKIN
MARSHAL COLEMAN
ANTHONY P. DELORENZO*
STEPHEN E. SPEISER
ANNETTE D. STOIA

*ADMITTED IN NEW YORK & NEW JERSEY

NEW JERSEY OFFICE
12 SYLVAN AVENUE
ENGLEWOOD CLIFFS, N. J. 07632
(201) 569-8020

MARIO BIAGGI
OF COUNSEL

January 4, 1984

Mr. Peter Neglia
Regional Administrator
Small Business Administration
26 Federal Plaza - Rm. 29-118
New York, New York 10278

Re: Wedtech Corp.

Dear Mr. Neglia:

Enclosed please find the following documents:

1. Restated Certificate of Incorporation of Welbilt Electronics Die Corp. which was filed by the Secretary of State.

2. Unanimous Written Consent of The Board of Directors of Wedtech Corp.

3. Letter from Squadron, Ellenoff, Plesent & Lehrer dated January 3, 1984 addressed to Mr. Peter Neglia regarding sale of shares of Wedtech Corp. to John Mariotta.

4. Stock Purchase Agreement.

5. SBA Form 1010B (8a) Business Eligibility Statement.

6. Statement of Personal History of Anthony Dominick Guariglia. X

7. Statement of Personal History of Lawrence J. Shorten. X

Mr. Peter Neglia
Regional Administrator

Re: Wedtech Corp.

9. Statement of Personal History of Alfred Rivera. ✓ X

10. Lawrence Shorten's Personal Financial Statement. X

11. Richard C. Bluestine's Personal Financial Statement. X

12. Anthony Guariglia's Personal Financial Statement. X

13. Alfred Rivera's Personal Financial Statement. ✓

14. Fred Neuberger's Personal Financial Statement. ✓

15. Mario Moreno's Personal Financial Statement. ✓

16. Mario Moreno's 8 (a) Personal Eligibility Statement. ✓

17. Alfred Rivera's 8 (a) Personal Eligibility Statement. ✓

18. Exhibit H - List of Company Officers indicating their positions with corporation.

19. Copy of prospectus dated August 25, 1983. X

20. Form 10-Q -Securities and Exchange Commission Quarterly Report. ✓

Sincerely,

Bernard G. Ehrlich

BGE:gt
Enclosures

STOCK PURCHASE AGREEMENT

AGREEMENT made this 27th day of December, 1983 by and among **ANTHONY GUARIGLIA**, residing at 7 Meadowood Drive, Jericho, New York 11753 ("Guariglia"), **MARIO MORENO**, residing at 3337 Sedgwick Avenue, Bronx, New York 10463 ("Moreno"), **FRED NEUBERGER**, residing at 111 East 85th Street, New York, New York 10028 ("Neuberger"), **LAWRENCE SHORTEN**, residing at 506 East 89th Street, New York, New York 10028 ("Shorten"), (Guariglia, Moreno, Neuberger and Shorten are sometimes hereinafter referred to individually as the "Seller" and collectively as the "Sellers") and **JOHN MARIOTTA**, residing at 100 Woodford Street, Scarsdale, New York 10583 ("Purchaser").

WITNESSETH:

WHEREAS, each of the Sellers is the record and beneficial owner of the number of common shares of Wedtech Corp., a corporation organized under the laws of the State of New York (the "Company"), listed opposite his name on the Schedule annexed hereto (the "Schedule"; the shares listed on the Schedule are hereinafter referred to collectively as the "Shares"); and

WHEREAS, each of the Sellers desires to sell to Purchaser, and Purchaser desires to purchase from the Sellers, on the terms and conditions set forth herein, the number of Shares set forth opposite each Seller's name immediately below:

Anthony Guariglia	~~54,000~~	50,175
Mario Moreno	~~246,000~~	224,274
Fred Neuberger	~~1,403,700~~	1,359,938
Lawrence Shorten	~~54,000~~	50,175

(The Shares to be sold, assigned and transferred by each of the Sellers pursuant hereto are sometimes hereinafter referred to as the "Transferred Shares").

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, the parties hereto agree as follows:

1. Each of the Sellers represents and warrants to the other Sellers and to Purchaser that he is the record and beneficial owner of the Shares set forth opposite his name on the Schedule.

2. Each of the Sellers agrees, upon the execution and delivery hereof, to sell, assign and transfer to Purchaser record and beneficial ownership of the Transferred Shares including all indicia of ownership and, specifically, the right to vote and the right to receive dividends thereon. Immediately following the execution and delivery hereof, each of the Sellers shall deliver to the Transfer Agent of the Company the certificates representing the Shares owned by him, with stock powers annexed thereto duly executed, effective to transfer the Transferred Shares to the Purchaser. The Sellers shall cause the Transfer Agent to reissue the certificates representing the Transferred Shares in the name of Purchaser.

3. The purchase price to be paid by Purchaser to each of the Sellers for the Transferred Shares shall be payable in ten annual installments due on January 1 of each year commencing January 1, 1986 (each such date being referred to herein as an "Installment Date"). The amount of the purchase price payable to each Seller at each Installment Date shall be the Fair Market Value Per Share (as hereinafter defined) multiplied by the number of Transferred Shares sold by such Seller and divided by ten (10).

The Fair Market Per Share shall mean:

(a) if the Company's common shares are quoted on NASDAQ, the reported NASDAQ bid price per share for the trading date immediately prior to the Installment Date;

(b) if the Company's common shares are traded on a National Securities Exchange, the reported closing price per share on such Exchange for the trading date immediately prior to the Installment Date;

(c) if neither (a) nor (b) above are applicable, such other valuation of market value as may be agreed upon by the parties hereto.

4. Purchaser represents and warrants to each of the Sellers that he is acquiring the Transferred Shares pursuant hereto for his own account for investment, and not with a view to or for sale in connection with any distribution thereof or with any present intention of selling or distributing all or any part thereof.

5. Any controversy or claim arising out of or concerning this Agreement or the performance thereof shall be settled by a single arbitrator (the "Arbitrator") in accordance with the rules then obtaining of the American Arbitration Association,

except that the Arbitrator shall not have the power to reform this Agreement. Such arbitration shall be held in the borough of Manhattan, City of New York. Judgment on any award rendered shall be binding on the parties hereto and may be entered in any court having jurisdiction thereof. The costs of the arbitration shall be borne equally by all the parties hereto.

6. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their personal representatives, heirs, legatees, successors and assigns.

7. No waiver of any of the provisions of this Agreement or of any of the rights or remedies of the parties hereto shall be valid except if same be in writing signed by the party charged therewith. A waiver of any one or more of the provisions shall be limited to the particular instance specified in such writing, and shall not be deemed a continuing waiver of such provision or of any subsequent breach. All remedies provided herein shall be deemed to be in addition to and not in substitution for any other remedies provided by law.

8. This Agreement shall be construed in accordance with the laws of the State of New York, without giving effect to the conflicts of laws provisions thereof.

9. If any provision of this Agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision and not in any wise affect or render invalid or unenforceable any other provisions of this Agreement, and this Agreement shall be carried out as if any such invalid or unenforceable provision were not embodied herein.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

Anthony Guariglia

Anthony Guariglia

Mario Moreno

Fred Neuberger

Lawrence Shorten

John Mariotta

SCHEDULE

LIST OF SHARES OF COMMON STOCK OF WEDTECH CORP. BENEFICIALLY OWNED BY AND RECORDED IN THE NAMES OF ANTHONY GUARIGLIA. MARIO MORENO. FRED NEUBERGER AND LAWRENCE SHORTEN

Anthony Guariglia	67,500
Mario Moreno	308,250
Fred Neuberger	1,558,375
Lawrence Shorten	67,500

ESCROW AGREEMENT

Escrow Agreement dated as of December 27, 1983 by and among **SQUADRON, ELLENOFF, PLESENT & LEHRER** ("Escrow Agent"); **ANTHONY GUARIGLIA**, residing at 7 Meadowood Drive, Jericho, New York 11753 ("Guariglia"); **MARIO MORENO**, residing at 3337 Sedgwick Avenue, Bronx, New York 10463 ("Moreno"); **FRED NEUBERGER**, residing at 111 East 85th Street, New York, New York 10028 ("Neuberger"); and **LAWRENCE SHORTEN**, residing at 506 East 89th Street, New York, New York 10028 ("Shorten"); (Guariglia, Moreno, Neuberger and Shorten being referred to hereinafter individually as a "Seller" and collectively as the "Sellers") and **JOHN MARIOTTA**, residing at 100 Woodford Street, Scarsdale, New York 10583 ("Purchaser").

This Escrow Agreement is being entered into in connection with that certain agreement, dated December 27, 1983 (the "Stock Purchase Agreement"), pursuant to which Sellers agreed to sell to Purchaser and Purchaser agreed to purchase from each of the Sellers, certain shares of Wedtech Corp. (such shares, the "Transferred Shares".)

1. The Security. As collateral security for the payment of the purchase price for the Transferred Shares, as is further described in the Stock Purchase Agreement. Purchaser shall, as soon as is practicable after the date hereof, deliver to the Escrow Agent the stock certificates representing the Transferred Shares, each certificate together with stock powers duly executed in proper form for transfer.

Upon notice to the Escrow Agent from the Sellers stating that Purchaser has delivered to all of the Sellers the payment in full of an Installment Payment, as defined in the Stock Purchase Agreement, the Escrow Agent shall deliver ten percent (10%) of the Transferred Shares to Purchaser. The Escrow Agent may, without further act or consent of Purchaser or Seller, deliver the certificates representing Transferred Shares to the transfer agent of Wedtech Corp. to divide the certificates into the denominations required pursuant to this Section.

2. Events of Default. Upon (a) the death of Purchaser; or (b) the termination, for any reason whatsoever, of Purchaser's employment by Wedtech Corp; or (c) in the event that Purchaser has not made all payments required to be made to Sellers at any Installment Date pursuant to the Stock Purchase Agreement, and such default has not been cured by payment in full within ten (10) days thereafter, an event of default ("Event of Default") shall be deemed to have occured.

Upon the occurrence of an Event of Default, any of the Sellers shall have the right to give notice to Purchaser (or Purchaser's Estate, as the case may be), the other Sellers and the Escrow Agent of such Event of Default requiring the return of the Shares held pursuant hereto by the Escrow Agent. Within ten (10) days after receipt of such notice, Escrow Agent shall return to each Seller all the Transferred Shares then held by the Escrow Agent with respect to such Seller. For the purposes of this Section 2, the number of shares to be returned to each Seller shall be the number of Transferred Shares acquired by the Purchaser from such Seller under the Stock Purchase Agreement multiplied by the number of Installment Payments not fully paid (including payments not yet due) divided by ten (10). An Event of Default with respect to any Seller under (c) above shall be deemed an Event of Default by Purchaser in his obligations to all Sellers under the Stock Purchase Agreement.

3. Rights of Purchaser with Respect to the Transferred Shares. While the Transferred Shares are being held by Escrow Agent, and unless there has occurred an Event of Default as set forth in Section 2 hereof, Purchaser shall have all the rights of a shareholder with respect thereto.

4. Acts of Escrow Agent. Escrow Agent may act in accordance with the terms hereof or upon any instrument or other writing believed by it in good faith to be genuine and to be signed or presented by the proper person, and shall not be liable therewith or in connection with the performance by it of its duties pursuant to the provisions of this Escrow Agreement, except for its own fraud or wilful default. Escrow Agent is entitled to rely on the written instruction of any one of the Sellers which represents that it is being submitted on behalf of all of the Sellers, without further inquiry.

5. Dissolution or Resignation of Escrow Agent. Upon the dissolution or resignation of the Escrow Agent, the other interested parties hereto jointly shall designate a successor Escrow Agent upon whom all of the rights and obligations of the Escrow Agent hereunder shall devolve, and the original Escrow Agent hereunder shall be released and discharged of all liability hereunder (except such as may result from its own fraud or willful default) on delivery to the successor Escrow Agent of all of the Transferred Shares then held by it pursuant to this Agreement. In the event the parties do not promptly make a joint designation of a successor Escrow Agent, such successor Escrow Agent shall be selected by arbitration between the parties to be conducted by and pursuant to the rules then prevailing of the American Arbitration Association in the City of New York and such selection shall be final and binding upon the parties.

6. Cooperation of Parties. Each of the parties agrees to execute such documents or consents and give such instructions as may be contemplated hereunder to give effect to the intentions of the parties under this Escrow Agreement and the Stock Purchase Agreement.

7. General.

(a) This Escrow Agreement shall be binding upon each of the parties and their respective legal representatives, heirs, successors and assigns.

(b) This Escrow Agreement was negotiated and executed in, and shall be governed in all respect by the laws of the State of New York.

(c) This Escrow Agreement constitutes the full and entire understanding and agreement among the parties with respect to the subject matter hereof and supersedes any and all representations or understandings with respect to any matters of any kind heretofore made relating or pertaining to the transactions contemplated in this Escrow Agreement.

(d) This Escrow Agreement cannot be terminated, changed or amended in any way except by a writing signed by all of the parties hereto.

(e) All notices, instruments and other communications to be made or given hereunder shall be in writing and shall be deemed to have been duly given or made when delivered by hand or mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, to the addresses designated herein, or at such other address as may be designated by notice given hereunder.

If to Escrow Agent:

Squadron, Ellenoff, Plesent & Lehrer
551 Fifth Avenue
New York, New York 10017
Attn: Howard M. Squadron, Esq.

If to Sellers:

Anthony Guariglia
7 Meadowood Drive
Jericho, New York 11753

Mario Moreno
3337 Sedgwick Avenue
Bronx, New York 10463

Fred Neuberger
111 East 85th Street
New York, New York 10028

Lawrence Shorten
506 East 89th Street
New York, New York 10028

Copies to:

Squadron, Ellenoff, Plesent & Lehrer
551 Fifth Avenue
New York, New York 10017
Attn: Howard M. Squadron, Esq.

If to Purchaser:

John Mariotta
100 Woodford Street
Scarsdale, New York 10583

Copy to:

Squadron, Ellenoff, Plesent & Lehrer
551 Fifth Avenue
New York, New York 10017
Attn: Howard M. Squadron, Esq.

Any notice so given in conformity with this subparagraph (e) shall be deemed to be effective if mailed by registered or certified mail to the addressee specified herein. Any notice hereunder delivered by hand shall be effective when delivered to the addressee at the address specified herein.

Copies of all notices, instruments and other communications shall be simultaneously sent to all of the parties hereto in accordance with the foregoing provisions.

(f) No delay or failure to exercise any right, power or remedy accruing to any party hereunder upon any breach by or default of any other party under this Escrow Agreement, shall, by itself, impair any such right, power or remedy of such party, nor shall the same be construed or constitute a waiver or any such breasch or default or an acquiescence therein or of any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party or any breach or default under this Escrow Agreement, or any waiver on the part of any party of any provision or condition of this Escrow Agreement, shall be effective only as specifically set forth in writing.

(g) If any provision of this Escrow Agreement shall be hald invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision and shall not in any manner affect or render invalid or unenforceable any other several provisions of this Escrow Agreement, and this Escrow Agreement shall be carried out as if any such invalid or unenforceable provisions were not contained therein.

(h) This Escrow Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

(i) The titles of the paragraphs of this Escrow Agreement are inserted merely for convenience of reference and are not to be considered in construing this Escrow Agreement.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement as of the date first above written.

SQUADRON, ELLENOFF, PLESENT & LEHRER

By: ______________________________

ANTHONY GUARIGLIA

MARIO MORENO

FRED NEUBERGER

LAWRENCE SHORTEN

JOHN MARIOTTA

STOCK PURCHASE AGREEMENT

AGREEMENT made this 27th day of December, 1983, by and among RICHARD MARIO BIAGGI, residing at 5 Horizon House Road, Ft. Lee, New Jersey, ("Biaggi"), BERNARD G. EHRLICH, residing at Mianus Drive,Bedford Village, New York, 10506, ("Ehrlich"), (Biaggi and Ehrlich) are sometimes hereinafter referred to individually as the "Seller" and collectively as the "Sellers") and JOHN MARIOTTA, residing at 100 Woodford Street, Scarsdale, New York 10583 ("Purchaser").

WITNESSETH:

WHEREAS, each of the Sellers is the record and beneficial owner of the number of common shares of Wedtech Corp., a corporation organized under the laws of the State of New York (the "Company"), listed opposite his name on the Schedule annexed hereto (the "Schedule"; the shares listed on the Schedule are hereinafter referred to collectively as the "Shares"); and

WHEREAS, each of the Sellers desires to sell to Purchaser, and Purchaser desires to purchase from the Sellers, on the terms and conditions set forth herein, the number of shares set forth opposite each Seller's name immediately below:

Richard Mario Biaggi	56,250
Bernard G. Ehrlich	56,250

(The Shares to be sold, assigned and transferred by each of the Sellers pursuant hereto are sometimes hereinafter referred to as the "Transferred Shares").

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, the parties hereto agree as follows:

1. Each of the Sellers represents and warrants to the other Sellers and to Purchaser that he is the record and beneficial owner of the Shares set forth opposite his name on the Schedule.

2. Each of the Sellers agrees, upon the execution and delivery hereof, to sell, assign and transfer to Purchaser record and beneficial ownership of the Transferred Shares including all indicia of ownership and, specifically, the right to vote and the right to receive dividends thereon. Immediately following the execution and delivery hereof, each of the Sellers shall deliver to the Transfer Agent of the Company the certificates representing the Shares owned by him with stock powers annexed thereto duly executed, effective to transfer the Transferred Shares to the Purchaser. The

Sellers shall cause the Transfer Agent to reissue the certificates representing the Transferred Shares in the name of Purchaser.

3. The purchase price to be paid by Purchaser to each of the Sellers for the Transferred Shares shall be payable in two annual installments due on January 1 of each year commencing January 1, 1985 as the first payment with the second and final payment to be made on January 1, 1986 (each such date being referred to herein as an "Installment date"). The amount of the purchase price payable to each Seller at each Installment Date shall be the Fair Market Value Per Share (as hereinafter defined) multiplied by the number of Transferred Shares sold by such Seller and divided by two(2).

The Fair Market Per Share shall mean:

(a) if the Company's common shares are quoted on NASDAQ, . the reported NASDAQ bid price per share for the trading date immediately prior to the Installment Date;

(b) if the Company's common shares are traded on a National Securities Exchange, the reported closing price per share on such Exchange for the trading date immediately prior to the Installment Date;

(c) if neither (a) nor (b) above are applicable, such other valuation of market value as may be agreed upon by the parties hereto.

4. Purchaser represents and warrants to each of the Sellers that he is acquiring the Transferred Shares pursuant hereto for his own account for investment, and not with a view to or for sale in connection with any distribution thereof or with any present intention of selling or distributing all or any part thereof.

5. Any controversy or claim arising out of or concerning this Agreement or the performance thereof shall be settled by a single arbitrator (the "Arbitrator") in accordance with the rules then obtaining of the American Arbitration Association, except that the Arbitrator shall not have the power to reform this Agreement. Such arbitration shall be held in the borough of Manhattan, City of New York. Judgment on any award rendered shall be binding on the parties hereto and may be entered in any court having jurisdiction thereof. The costs of the arbitration shall be borne equally by all the parties hereto.

6. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their personal representatives, heirs, legatees, successors and assigns.

7. No waiver of any of the provisions of this Agreement or of any of the rights or remedies of the parties hereto shall be valid except if same be in writing signed by the party charged therewith. A waiver of any one or more of the provisions shall be limited to the particular instance specified in such writing, and shall not be deemed a continuing waiver of such provision or of any subsequent breach. All remedies provided herein shall be deemed to be in addition to and not in substitution for any other remedies provided by law.

8. This Agreement shall be construed in accordance with the laws of the State of New York, without giving effect to the conflicts of laws provisions thereof.

9. If any provision of this Agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision and not in any wise affect or render invalid or unenforceable any other provisions of this Agreement, and this Agreement shall be carried out as if any such invalid or unenforceable provision were not embodied herein.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

RICHARD MARIO BIAGGI

BERNARD G. EHRLICH

JOHN MARIOTTA

SCHEDULE

LIST OF SHARES OF COMMON STOCK OF WEDTECH CORP. BENEFICIALLY OWNED BY AND RECORDED IN THE NAMES OF RICHARD MARIO BIAGGI AND BERNARD G. EHRLICH

RICHARD MARIO BIAGGI	112,500
BERNARD G. EHRLICH	112,500

ESCROW AGREEMENT

Escrow Agreement dated as of December 27, 1983 by and among RICHARD BIAGGI, residing at 5 Horizon Road, Fort Lee, New Jersey 07024 ("Biaggi") and BERNARD G. EHRLICH, residing at Mianus Drive, Bedford Village, New York 10506 ("Ehrlich"); (Biaggi and Ehrlich being referred to hereinafter individually as "Seller" and collectively as the "Sellers").

This Escrow Agreement is being entered into in connection with that certain agreement, dated December 27, 1983 (the "Stock Purchase Agreement"), pursuant to which Sellers agreed to sell to Purchaser and Purchaser agreed to purchase from each of the Sellers, certain share of Wedtech Corp. (such shares, the "Transferred Shares".)

1. The Security. As collateral security for the payment of the purchase price for the Transferred Shares, as is further described in the Stock Purchase Agreement. Purchaser shall, as soon as is practicable after the date hereof, deliver to the Escrow Agent the stock certificates representing the Transferred Shares, each certificate together with stock powers duly executed in proper form for transfer.

Upon notice to the Escrow Agent from the Sellers stating that Purchaser has delivered to all of the Sellers the payment in full of an Installment Payment, as defined in the Stock Purchase Agreement, the Escrow Agent shall deliver fifty percent (50%) of the Transferred Shares to Purchaser. The Escrow Agent may, without further act or consent of Purchaser of Seller deliver the certificates representing Transferred Shares to the transfer agent of Wedtech Corp. to divide the certificates into the denominations required pursuant to this Section.

2. Events of Default. Upon (a) the death of Purchaser; or (b) the termination, for any reason whatsoever, of Purchaser's employment by Wedtech Corp; or (c) in the event that Purchaser has not made all payments required to be made to Sellers at any Installment Date pursuant to the Stock Purchase Agreement, and such default has not been cured by payment in full within ten (10) days thereafter, an event of default ("Event of Default") shall be deemed to have occurred.

Upon the occurrence of an Event of Default, any of the Sellers shall have the right to give notice to Purchaser (or Purchaser's Estate, as the case may be), the other Sellers and the Escrow Agent of such Event of Default requiring the return of the Shares held pursuant hereto by the Escrow Agent. Within ten (10) days after the receipt of such notice, Escrow Agent shall return to each Seller all the Transferred Shares then held by the Escrow Agent with respect to such Seller. For the purposes of this Section 2, the number of shares to be returned to each Seller shall be the number of Transferred Shares acquired by the Purchaser from such Seller under the Stock Purchase Agreement multiplied by the number of Installment Payments not fully paid (including payments not yet due) divided by two (2). An Event of Default with respect to any Seller under (c) above shall be deemed an Event of Default by Purchaser in his obligations to all Sellers under the Stock Purchase Agreement.

3. Rights of Purchaser with Respect to the Transferred Shares. While the Transferred Shares are being held by Escrow Agent, and unless there has occurred an Event of Default as set forth in Section 2 hereof, Purchaser shall have all the rights of a shareholder with respect thereto.

4. Acts of Escrow Agent. Escrow Agent may act in accordance with the terms hereof or upon any instrument or other writing believed by it in good faith to be genuine and to be signed or presented by the proper person, and shall not be liable therewith or in connection with the performance by it of its duties pursuant to the provisions of this Escrow Agreement, except for its own fraud or willful default. Escrow Agent is entitled to rely on the written instruction of any one of the Sellers which represent that it is being submitted on behalf of all of the Sellers, without further inquiry.

5. Dissolution or Resignation of Escrow Agent. Upon the dissolution or resignation of the Escrow Agent, the other interested parties hereto jointly shall designate a successor Escrow Agent upon whom all of the rights and obligations of the Escrow Agent hereunder shall devolve, and the original Escrow Agent hereunder shall be released and discharged of all liability hereunder (except such as may result from its own fraud or willful default) on delivery to the successor Escrow Agent of all of the Transferred Shares then held by it pursuant to this Agreement. In the event the parties do not promptly make a joint designation of a successor Escrow Agent, such Escrow Agent shall be selected by arbitration between the parties to be conducted by and pursuant to the rules then prevailing of the American Arbitration Association in the City of New York and such selection shall be final and binding upon the parties.

6. Cooperation of Parties. Each of the parties agrees to execute such documents or consents and give such instructions as may be contemplated hereunder to give effect to the intentions of the parties under this Escrow Agreement and the Stock Purchase Agreement.

7. General.

(a) This Escrow Agreement shall be binding upon each of the parties and their respective legal representatives, heirs, successors and assigns.

(b) This Escrow Agreement was negotiated and executed in, and shall be governed in all respects by the laws of the State of New York.

(c) This Escrow Agreement constitutes the full and entire understanding and agreement among the parties with respect to the subject matter hereof and supersedes any and all representations or understandings with respect to any matters of any kind heretofore made relating or pertaining to the transactions contemplated in this Escrow Agreement.

(d) This Escrow Agreement cannot be terminated, changed or amended in any way except by a writing signed by all of the parties hereto.

(e) All notices, instruments and other communications to be made or given hereunder shall be in writing and shall be deemed to have been duly given or made when delivered by hand or mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, to the addresses designated herein, or at such other address as may be designated by notice given hereunder.

If to Escrow Agent:

Squadron, Ellenoff, Plesent & Lehrer
551 Fifth Avenue
New York, New York 10017
ATT: Howard M. Squadron, Esq.

If to Sellers:

Richard Biaggi
Biaggi and Ehrlich
299 Broadway
New York, New York 10007

Bernard G. Ehrlich
Biaggi and Ehrlich
299 Broadway
New York, New York 10007

Copies to:

Squadron, Ellenoff, Plesent & Lehrer
551 Fifth Avenue
New York, New York 10017
ATT: Howard M. Squadron, Esq.

If to Purchaser:

John Mariotta
100 Woodford Street
Scarsdale, N.Y. 10583

Copy to:

Squadron, Ellenoff, Plesent & Lehrer
551 Fifth Avenue
New York, New York 10017
ATT: Howard M. Squadron, Esq.

Any notice so given in conformity with this subparagraph (e) shall be deemed to be effective if mailed by registered or certified mail to the addressee specified herein. Any notice hereunder delivered by hand shall be effective when delivered to the addressee at the address specified herein.

Copies of all notices, instruments and other communications shall be simultaneously sent to all of the parties hereto in accordance with the foregoing provisions.

(f) No delay or failure to exercise any right, power or remedy accruing to any party hereunder upon any breach by or default of any other party under this Escrow Agreement, shall, by itself, impair any such right, power or remedy of such party, not shall the same be construed or constitute a waiver or any such breach or default or an acquiescence therein or of any similar breach or default thereafter occurring, not shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party or any breach or default under this Escrow Agreement, shall be effective only as specifically set forth in writing.

(g) If any provision of this Escrow Agreement shall be held invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision and shall not in any manner affect or render invalid or unenforceable any other several provisions of this Escrow Agreement, and this Escrow Agreement shall be carried out as if any such invalid or unenforceable provisions were not contained therein.

(h) This Escrow Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

(i) The titles of the paragraphs of this Escrow Agreement are inserted merely for convenience of reference and are not to be considered in construing this Escrow Agreement.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement as of the date first above written.

SQUADRON, ELLENOFF, PLESENT
& LEHRER

By: ______________________
Ptnr

____
RICHARD BIAGGI

____
BERNARD G. EHRLICH

WEDTECH'S MEMORANDUM IN SUPPORT OF THE TRANSFER OF WEDTECH STOCK

BIAGGI and EHRLICH
299 Broadway
New York, N.Y. 10007

January 4, 1984

I. UNDER NEW YORK CASE THE TRANSFER OF WEDTECH SHARES IS VALID

This memorandum addresses the issue of whether Wedtech shareholders may transfer shares among themselves for nominal consideration.

Under New York Law, absent fraud. a transfer of stock for nominal consideration between shareholders is valid and enforceable.

In New York, Courts will not generally question the adequacy of consideration. Spaulding v. Benenati. 57 N.Y. 2d 420, 4456 N.Y.S. 2d 733, 442 N.E. 2d 1244 (1982) Mecher v. Weiss. 306 N.Y. 1, 114 N.E. 2d 177 (1953); 21 N.Y. Jur. 2d, Contracts, Section 74. If the consideration is "acceptable" to the promisee, the fact that the value received is disproportionate to the consideration given is irrelevant Weiner v. McGraw - Hill, Inc., 57 N.Y. 2d 458, 457 N.Y.S. 2d 193, 443 N.E. 2d 441 (1982). Consequently, New York courts do not weigh the quantum of consideration; rather, the judiciary investigates into the reality of the consideration. Mencher v. Weiss. 306 N.Y. 1, 114 N.E. 2d 117 (1953); Rapp v. Cansdale. 29 Misc. 2d 236, 214 N.Y.S. 2d 522 (Monroe Ct. 1960); aff'd. 12 A.D. 2d 884, 211 N.Y.S. 2d 1002 (4th Dept. 1961). The Court of Appeals has stated:

> It is commonplace, of course that adult persons, suffering from no disabilities. have complete freedom of contract and that the courts will inquire into the adequacy of the consideration. If a person chooses to make an extravagent promise for an inadequate consideration, it is his own affiar. The slightest consideration is sufficient to support the most onerous obligation; the inadequacy, as has been well said, is for the parties to consider at the time of the making the agreement, and not for the court when it is sought to be enforced. It is competent for the parties to make whatever contracts they may plese, so long as there is no fraud or deception or infringement of law. Hence the fact that the bargain is a hand one will not deprive it of validity. (Citations omitted).

Mandel v. Lieberman. 303 N.Y. 88, 93 100 N.E. 2d 149 (1951).

In New York consideration is defined as the following: is what is offered in return for a promise; it is something extended by a party and accepted by the other as an element of the contract. Payne v. Connolly, 32 A.D. 693, 299 N.Y.S. 2d 1013 (3d Dept. 1969) (per curiam); 9 N.Y. Jur., Contracts Section 72.

The transfer of Wedtech shares is lawful. The transfer of stock was paid in United States currency, and hence, there was real consideration. The adequacy of consideration is for the parties to the transaction to determine. Therefore, since the parties to the sale of Wedtech stock reached an agreement concerning the price of the shares, then, as a matter of law, the judiciary is obligated to respect the determination of the parties and uphold the contract. Spaulding v. Benenati, 57 N.Y. 2d 418, 436 N.Y.S. 2d 733, 442 N.E. 2d 1244 (1982); Mencher v. Weiss, 306 N.Y 1, 114 N.E. 2d 177 (1953).

There is no allegation of fraud present in this transaction. The parties possessed sufficient material information to value Wedtech shares. Indeed, none of the parties has complained of deception. Rather, the parties are arguing that the transaction should be validated, which demostrates satisfaction with the sale. Accordingly, the transaction is free of fraud, and thus, it is lawful. Mencher v. Weiss, 306 N.Y. 1, 114 N.E. 2d 117 (1953).

To summarize, absent fraud the inadequacy of consideration is irrelevant. Complete disclosure was made by the parties, and thus, under New York law the transfer of Wedtech share is valid.

II. UNDER THE UCC THE TRANSFER OF WEDTECH SHARES IS VALID

The sale of Wedtech shares is conscionable. Uniform Commercial Code Section 2-302 regulates unconscionable contracts. N.Y. U.C.C. Law Section 2-302 (McKinney 1964). The Section reads:

Section 2-302. Unconscionable Contact or Clause

> (1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.
> (2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

N.Y. U.C.C. Law Section 2-302 (McKinney 1964).

The concept of unconscionability prevents unjust enforcement of onerous contract provisions which one party is able to impose on the other because of a tremendous disparity in bargaining power. Rowe v. Great Atlantic & Pacific Tea Co., Inc., 46 NY. 2d 62, 412 N.Y.S. 2d 827, 385 N.E. 2d 566 (1978). Furthermore, for a transaction to qualify as unconscionable there must be an absence of a meaningful choice on the part of one of the parties, and the terms of the contract must be inequitable to the other party.
State v. Avco Financial Service of New York. Inc. 50 N.Y. 2d 383, 429, N.Y.S. 2d 181, 406 N.E. 2d 1075 (1980).

The elements of unconscionability include: high-pressure sales tactics; failure to disclose the terms of the contract; misrepresentation and fraud on the part of the seller; a refusal to bargain on certain crucial terms; clauses hidden in fine print; unequal bargaining power; inflated prices; and inequitable warranty disclaimers Nu Dimensions Figure Salons v. Becerra. 73 Misc. 2d 140, 340 N.Y.S. 2d 268 (Queens Civ. Ct. 1973).

The concept of unconscionability was meant to protect the unwary; however unconscionability was not meant to supplant freedom of contract between two equal parties. See *Graziano* v. *Tortora Agency, Inc.*, 78 Misc. 2d 1094, 359 N.Y.S. 2d 489 (Queens Civ. Ct. 1974).

The parties to the transaction, the buyer and seller, dealt on an equal basis. Hence, disparity in bargaining power an important element of an unconscionalbe transaction, is absent. Thus, this is a persuasive indication that the sale is conscionable. *Rowe* v. *Great Atlantic & Pacific Tea Co., Inc.*, 46 N.Y.2d 62, 412 N.Y.S. 2d 827, 385 N.E. 2d 566 (1978).

The parties were cognizant of the material information necessary to value Wedtech stock. Therefore, the sale is free of fraud. A testament to the fairness of the transaction is that none of the principals is remonstrating. Consequently, this is another factor which demonstrates that the sale is conscionable. *Nu Dimensions Figure Salon* v. *Becerra*, 73 Misc. 2d 1094, 359 N.Y.S. 2d 489 (Queens Civ. Ct. 1974).

The negotiations were devoid of high pressure sales tactic: Both parties were sophisticated; and thus, each was able to protect his interest. Therefore, this is another element of the transaction which indicates the sale is conscionable. *Nu Dimensions Figure Salons* v. *Becerra*, 73 Misc. 2d 1094, 359 N.Y.S. 2d 489 (Queens Civ. Ct. 1974).

Freedom of contract is sacred. The parties to the contract were informed, and therefore, the transaction was devoid of fraud. The seller and buyer dealt on an equal basis; consequently, there was no overreaching. In conclusion, under the Uniform Commercial Code the transaction is lawful.

U.S. SMALL BUSINESS ADMINISTRATION
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278

OFFICE OF THE DISTRICT DIRECTOR

DATE: January 4, 1984

REPLY TO ATTN OF: Merv Shorr
Acting District Director

SUBJECT: Wedtech Corporation, formerly known as
Welbuilt Electronic Tool & Die Corporation
Request for Extension of Fixed Program Participation

TO: Peter P. Neglia
Regional Administrator

THRU: Edric C. Rose
ARA/ MSB-COD

Reference is made to our memo of March 18, 1983 recommending a four (4) year extension of subject firm's FPPT.

This office has recently received documents submitted by the principals of Wedtech Corporation in support of its position concerning certain changes in stock ownership. In view of the above circumstances and after review of all documents submitted in connection therewith, we are now recommending that an extension of 3 years be granted instead of the 4 years recommended in our previous memo of March 18, 1983.

Merv Shorr
Acting Distict Director

U.S. SMALL BUSINESS ADMINISTRATION
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10007

OFFICE OF THE DISTRICT DIRECTOR

DATE: January 5, 1984

REPLY TO ATTN OF: David Elbaum
District Counsel

SUBJECT: Wedtech Corporation formerly known as
Welbilt Electronic Tool & Die Corporation

TO: Edric Rose
ARA/MSB-COD

On January 4th you asked me to review the documentation submitted by the law firm of Biaggi & Ehrlich in behalf of Wedtech Corporation and Mr. John Mariotta.

The basic issue is whether or not the submissions support a finding by SBA that Mr. John Mariotta continues to have a controlling interest in the Wedtech Corporation.

I have reviewed the various Stock Purchase Agreements and Escrow Agreements covering the transfer of stock to John Mariotta. In addition, I have reviewed the Memoranudm of Law submitted by the law firm of Biaggi & Ehrlich covering the validity of the transfer, under New York Law, with regard to consideration and conformity to the Uniform Commercial Code. I also reviewed the opinion of the law firm of Squadron, Ellenoff, Plesent and Lehrer with regard to the Securities Act of 1933 and that pursuant to said Act, the stock involved in the transfer need not be registered. Additionally, I have reviewed the opinion of the same law firm to the effect that with regard to the within transaction, all rules and regulations of the SEC have been complied with. I incorporate all of the above, by reference, into this opinion.

After reviewing all of the above, it is my considered opinion that all of the agreements are valid, binding and enforceable and that, John Mariotta, by virtue of his ownership of approximately 53% of all of the voting stock, does, in fact, have controlling interest at this time. It must, however, be noted that the Stock Purchase Agreements require payments by the purchaser beginning January, 1986 for him to continue control after that date.

In view of all of the comments contained herein, it is Counsel's opinion that there is a sufficient controlling interest on the part of John Mariotta to warrant continuation in the 8(a) program.

Respectfully,

David Elbaum
District Counsel

U.S. SMALL BUSINESS ADMINISTRATION
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10007

OFFICE OF THE DISTRICT DIRECTOR

DATE: January 5, 1984

REPLY TO ATTN OF: Edric Rose
ARA/MSB-COD

SUBJECT: Wedtech Corporation

TO: Peter P. Neglia
Regional Administrator

This office has examined the documents submitted by the principals of Wedtech Corporation in support of its position that changes in stock ownership, which effected the status of the persons on whom 8(a) eligibility was based, have been corrected.

The file indicates that recent transfers of stock were made to John Mariotta, which make him the owner of over 55% of the stock of Wedtech Corporation. The present composition of the Board of Directors is five (5), three of whom are socially and economically disadvantaged. Forms 1010A and 413 on Mario Moreno and Alfred Rivera, the additional persons on whom eligibility will be based, are in file. District Counsel's opinion, also contained in the file, is that there is a sufficient controlling interest on the part of the persons on whom eligibility is based to warrant continued participation in the 8(a) program. This office concurs with that opinion.

The persons on whom eligibility is based are all Hispanic and are therefore presumed to be socially disadvantaged. There is no information available to indicate that they have overcome this particular disadvantage. Financial statements of the three reflect net worths of $42.5, $194.0 and $610.0 exculsive of their stock interest in Wedtech Corporation. SEC regulation provide that none of the officers of the corporation can trade their stock on the market at this time. Thus it is not possible to value their shares using the current market value of same. Further, the present condition of the 8(a) firm with its 95% dependence on 8(a) contracts and fact that its competitors are all fortune 500 firms, makes it difficult to estimate the value of the said shares using other factors such a relevent percentage of the net worth of the firm.

In reviewing the memorandum submitted in support of the firm's continuation in the program, Wedtech Corporation makes reference to Civil Action #80-2671, case of BDM Services Corporation v.s. SBA et. al. In that case the courts accepted as fact that economic disadvantage is a function of the type of business in which a firm is engaged and that because complex and expensive contracts are involved, which contracts Congress clearly intended small business to share in, a large net worth does not, in itself, disqualify continued participation in the 8(a) program.

Wedtech Corporation requires large sums of money to maintain an adequate cash flow while performing the types of contracts it is engaged in. The strong financial status of the principals is necessary if financial institutions, which normally view high technology and minority companies as high risks, are to provide financial support to this firm.

It is, therefore, my opinion that because of the nature of the business of Wedtech Corporation and its large capital needs, as well as the present stage at which it stands in relation to the goal of competiveness in the private sector, the relative financial strength of the principals does not indicate that they are no longer economically disadvantaged.

Because of the above Wedtech Corporation still maintains the standards of eligibility for 8(a) participation and contract support. Further, it is my recommendation that a term of three (3) years be granted in response to the firm's request for an FPPT extension.

Edric C. Rose
ARA/MSB-COD

U. S. SMALL BUSINESS ADMINISTRATION
26 FEDERAL PLAZA RM 29-118
NEW YORK NEW YORK 10278

OFFICE OF THE REGIONAL ADMINISTRATOR

[illegible]
MSB - VC
1/12

DATE January 5, 1983

REPLY TO ATTN OF Peter P. Neglia
Regional Administrator

SUBJECT Wedtech Corporation Formerly
Welbilt Electronic Die Corporation

TO Henry T. Wilfong, Jr.
Associate Administrator
for Minority Small Business

The subject corporation presented a request for an extension of its FPPT on February 16, 1983. Firm's FPPT would have expired on October 12, 1983 but a 'bridge letter' was issued by Central Office on September 27, 1983.

Firm requested a 5 years extension but after a review at the District office, a 4 years extension was recommended with which this office concurred.

Subsequent to this, SBA was advised that a public offering of 1,750,000 shares of the stock of the corporation was being made. The preliminary prospectus reflected a change in the stock ownership and in the Board of Directors which removed control of the corporation from John Mariotta, the person on whom eligibility for 8(a) participation was based.

On September 14, 1983 the New York District office issued a cure letter expressing SBA's intention to recommend termination of the firm because of its failure to maintain the standards of eligibility for 8(a) participation. Specifically the failure of John Mariotta to retain ownership and control and failure of the firm to obtain prior permission of the AA/MSB-COD for the change in ownership. Central Office was notified of these facts on August 19, and September 22, 1983.

On October 17, 1983, Wedtech Corporation was given an extension to January 16, 1984, to respond to the cure letter after expressing their understanding that changes in stock ownership necessary to reinstate John Mariotta's control could not be done before that time.

[illegible]

At this time this office is in receipt of numerous letters and documents, including copies of Stock transfers, minutes, 1010A and B and financial statements which have been reviewed and have been the subject of scrutiny by the District Counsel and the MSB staff in the Region. The said documents together with legal opinions and a recommendation by the ARA/MSB-COD are enclosed herewith.

This office finds that Wedtech Corporation is owned and controlled by John Mariotta, Mario Moreno, and Alfred Rivera who own 55.3%, 5%, and 0% respectively of the stock of the corporation and who are members of the five (5) member Board of Directors. These three have submitted financial statements and 1010A which substantiate their claim to social and economic disadvantage.

It is my opinion that the information submitted answered the questions raised in the District Director's September 14, 1983 letter concerning ownership and control.

The failure of the firm to seek SBA's approval prior to making the changes was explained as due to the nature of making a public offering with the need to conform to SEC requirements and get approval. Thus it was not possible to present a firm position to SBA for approval.

My examination of the facts and recommendations lead me to conclude that Wedtech Corporation is in compliance with SBA's standards of eligibility based on Public Laws 95-507 and 96-481. The firm is owned and controlled by individuals who are socially and economically disadvantaged and has not reached a competitive status in the private sector. The firm is eligible to participate fully in the Section 8(a) Program.

I approve an extension of three (3) years from the date of its original FPPT to expire on October 11, 1986.

Peter P. Neglia

Peter P. Neglia
Regional Administrator

Enclosure

U. S. SMALL BUSINESS ADMINISTRATION
26 FEDERAL PLAZA · RM 29-118
NEW YORK, NEW YORK 10278

OFFICE OF THE REGIONAL ADMINISTRATOR

DATE January 11, 1984

REPLY TO ATTN OF Peter P. Neglia
Regional Administrator

SUBJECT Wedtech Corporation Formerly
Welbilt Electronic Die Corporation

TO Henry T. Wilfong, Jr.
Associate Administrator
for Minority Small Business

The subject corporation presented a request for an extension of its FPPT on February 16, 1983. Firm's request was for a 5 year extension. The New York District reviewed said request and by memorandum dated March 18, 1983, recommended a four (4) year extension. This office concurred with said recommendation by memoraudum dated June 19, 1983.

Subsequent to this, SBA was advised that a public offering of 1,750,000 shares of the stock of the corporation was being made. The preliminary prospectus reflected a change in the stock ownership and in the Board of Directors which removed control of the corporation from John Mariotta, the person on whom eligibility for 8(a) participation was based.

On September 14, 1983 the New York District office issued a cure letter expressing SBA's intention to recommend termination of the firm because of its failure to maintain the standards of eligibility for 8(a) participation. Specifically the failure of John Mariotta to retain ownership and control and failure of the firm to obtain prior permission of the AA/MSB-COD for the change in ownership. Central Office was notified of these facts on August 19, and September 22, 1983.

Firm's FPPT would have expired on October 12, 1983 but a "bridge letter' was issued by Central Office on September 27, 1983.

On October 17, 1983, Wedtech Corporation was given an extension to January 16, 1984, to respond to the cure letter after expressing their understanding that changes in stock ownership necessary to reinstate John Mariotta's control could not be done before that time.

At this time this office is in receipt of numerous letters and documents, including copies of Stock transfers, minutes, 1010As and Bs and financial statements which have been reviewed and have been the subject of scrutiny by the District Counsel and the MSB staff in the District and Region. The said documents, together with legal opinions and recommendations by the New York District Director and the ARA/MSB–COD are enclosed herewith.

This office finds that Wedtech Corporation is owned and controlled by John Mariotta, Mario Moreno, and Alfred Rivera who own 55.3%, 5%, and 0% respectively of the stock of the corporation and who are members of the five (5) member Board of Directors. These three have submitted financial statements and 1010As which substantiate their claim to social and economic disadvantage.

It is my opinion that the information submitted answers the questions raised in the District Director's September 14, 1983 letter concerning ownership and control.

The failure of the firm to seek SBA's approval prior to making the changes was explained as due to the nature of making a public offering, with the need to conform to SEC requirements and get approval. Thus it was not possible to present a firm position to SBA for approval. This is considered a reasonable explanation.

My examination of the facts and recommendations lead me to conclude that Wedtech Corporation is in compliance with SBA's standards of eligibility based on Public Laws 95-507 and 96-481. The firm is owned and controlled by individuals who are socially and economically disadvantaged and has not reached a competitive status in the private sector. The firm is thus eligible to participate fully in the Section 8(a) Program.

I now recommend an extension of three (3) years from the date of its original FPPT to expire on October 11, 1986.

Peter P. Neglia
Regional Administrator

Enclosure

ER/EB
264-1046

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

25 JAN 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John Mariotta
President
Wedtech Corporation
595 Gerard Avenue
Bronx, New York 10451

Dear Mr. Mariotta:

We have received your request for an extension of your Fixed Program Participation Term (FPPT). After careful review of the supporting documentation presented by you, and the factors contained in the Code of Federal Regulations, 13 C.F.R. 124.1-1, it is my determination that an extension of three years to the original FPPT is warranted. This decision is final and not subject to administrative appeal.

Please indicate your willingness to continue to abide by the terms of the Participation Agreement previously executed by you, by signing this letter in the space indicated below, and returning the executed copy to the attention of the Assistant District Director for Minority Small Business and Capital Ownership Development in the Small Business Administration New York District Office within 15 calendar days.

Your firm will cease to be an 8(a) Program participant effective October 12, 1986, upon the expiration of the FPPT extension.

Sincerely,

H Robert S

For Henry T. Wilfong, Jr.
Associate Administrator
  for Minority Small Business

I acknowledge that I have received notification of the three year extension of my Fixed Program Participation Term. My signature below indicates my agreement to abide by all terms and conditions of the Participation Agreement executed by me at the setting of my original Fixed Program Participation Term.

SIGNED: ____________________
John Mariotta, President
Wedtech Corporation

DATE: Jan/25/1984

JAN 30 1984

Robert Lhulier
Executive Assistant

General Counsel

Eligibility Status -- Wedtech Corp.

Your memorandum of January 6, 1984, requested my opinion as to the current eligibility of Wedtech Corporation for the 8(a) program. This review is based on the eligibility review file submitted by the New York Regional and District Offices.

A brief summary of the facts as presented are that Welbilt Electronics Die Corp., a certified 8(a) firm, filed a Restated Certificate of Incorporation with the State of New York Department of State on June 21, 1983, wherein the name of the company was changed to Wedtech Corp. and authorized the corporation to issue an additional 15,000,000 common shares at one cent par value per share.

Then by a prospectus dated August 25, 1983, an offering of 1,900,000 shares was made to the public. Of the 1,900,000 shares, 1,500,000 were offered by and for the account of Wedtech and 400,000 were offered for the account of selling shareholders. The file does not reflect who bought what number of shares, but there are legal opinions in the file stating that after the sale Mr. John Mariotta, the disadvantaged person upon whom 8(a) program eligibility was originally based, no longer owned the controlling interest nor was the board of directors controlled by disadvantaged persons.

However, a series of agreements with large stockholders (Stock Purchase Agreements I and II) dated December 27, 1983, transferred for value 1,802,062 shares of common stock with all rights and beneficial interest to Mr. Mariotta. These shares added to the 1,558,375 already owned by Mr. Mariotta brought his ownership to 3,360,437 shares which is alleged to be at least 55% of the outstanding shares. Also, on December 27, 1983, the shares purchased by Mr. Mariotta were transferred to an escrow agent as security for payment at a fair market price to be determined at dates the payments are due.

A special meeting of the board of directors was held on November 23, 1983, which increased the membership from four to five and elected Alfred Rivera as the fifth member. The company has submitted SBA Form 1010A, 8(a) Personal Eligibility Statement, on Mr. Rivera and Mr. Morena, as members of the board of directors. It is alleged that the five member board now has three disadvantaged members.

Finally, there are two legal opinions by outside counsel in the file supporting the validity of the transfer of stock and compliance with the Securities Act of 1933, as amended. Also, District Counsel, David Elbaum rendered an opinion dated January 5, 1984, that John Mariotta has "sufficient controlling interest . . . to warrant continuation in the 8(a) program." The ARA/MSB-COD determined by memorandum of January 5, 1984, that "Wedtech Corporation still maintains the standards of eligibility for 8(a) participation and contract support." Also, he recommends a three year FPPT extension. The Regional Administrator's memorandum of January 5, 1984, to the AA/MSB-COD states that his office "finds Wedtech Corporation is owned and controlled by John Mariotta, Mario Morena, and Alfred Rivera who owns 55.3%, 5% and 0%, respectively, of the stock of the corporation and who are members of the five (5) member Board of Directors." Also, he recommends a three year extension of Wedtech Corp. FPPT from its original expiration date of October 11, 1983.

Based on the information and opinions submitted with the file, it is my opinion that Wedtech corporation now meets the standards of 8(a) program eligibility pursuant to Pub. L. 95-507 and implementing regulations. However, in view of the fact that a critical percentage of Mr. Mariotta's stock is subject to deferred payment and accordingly is held in escrow against this payment, the Office of Eligibility should periodically review this issue to assure the continued ownership/control by the SBA certified disadvantaged persons. The AA/MSB/COD should advise the Regional Administrator of the results of these reviews. Also see SOP 80-05 (Sept. 4, 1979), SS 13(b)(3), 13(d)(3) and 13(d)(4).

Robert B. Webber
General Counsel

OLC:CLDean:JNotto;
Draft 1/20/84; Final 1/20/84; Retype 1/23/84; 1/27/84
OLC Log No. 15,256
Document No. 1125J

CD

Control No. OGC-524 Due 1/23/84

SBA MEETING AT WASHINGTON, D.C. FEBRUARY 3, 1984

WEDTECH - Mariotta, Moreno and General Ehrlich
MEDLEY - E. Medley and C. Holland
ADVANCED
MARINE - Glatz, Jons, and Siff.
SBA - Sanders, Lalier, Tuorbalock, Bennett, Rogers and Saldivar

LALIER: The purpose of the meeting is to discuss the technical and distribution aspects of the project. A lot of political blood has been shed. The S.B.A. and the firms have a good opportunity. Single largest long-term procurement, and the Administrator is committed to seeing this work.

SALDIVAR: This is significant for the 8(a) program. The Navy has to feel comfortable with the contractor. The final test is performance.

BENNETT: Management team of S.B.A. will interface with firms and the Navy. This is the tip of the iceberg, and we have to come through with flying colors. This is a big job. The management team is important for the project. When we have in-house problems keep them in-house.

The management team includes Region 2, negotiating team and engineer. Work on the proposal. The Navy wants to be on contract by March 27. Refine price proposals. Medley and Wedtech people have to talk. Wedtech, Medley and Advanced Marine have been written into the contract. In the specs is a copy of the delivery schedule.

SALDIVAR: American might be involved.

JONS: The Navy wants a proposal - approach, available resources, and price or manhours.

MORENO: We have had preliminary discussions.

MORENO: The power units Wedtech.

MEDLEY: The nonpower units.

MEDLEY: Nonpower units no engine.

MARIOTTA: Power units are three parts: two engines and the contols.

MORENO: The few cans that go in front of the power units.

MEDLEY: We should discuss.

JONS: Item 1, Item 2 the powers sections. Only items four and five are nonpowered.

BENNETT: Negotiate with Advanced Marine for part of the contract.

MARIOTTA: I tried to get in contact with Glatz.

MORENO: We got in contact, but he did not get in contact with us.

MARIOTTA: We tried but he did not come.

MARIOTTA: I hired another contractor for the Navy visit.

SBA: What do we have to do?

MARIOTTA: I have to get a price from him.

MORENO: Is the company capable and show me your bids.

WEDTECH: We understand the importance of the contract.

GLATZ: I don't believe you (John) should air your disagreements in the open. The Navy is comfortable with us. We want to help the project. We want to plug in the holes.

WEDTECH: Wedtech and Medley will suffer if anything goes wrong.

ADMINISTRATOR
SANDERS: This is the big production.

A PRIVATE MEETING WAS HELD TO FINALIZE THE CONTRACT.

ISSUE ONE

Power and nonpower no problems

all parties agreed -

Wedtech - motorized

Medley - nonmotorized -

004
005

TOTAL PROJECT 23,000,00

nonpower 4-5 mil.

Wedtech - Medley can also do the fron-end pontoons and connectors.

Value of the contract - 1,000,00

90 P's
15 male and female connectors

Must add Glatz' costs to this.

AGREED: Division of the contract between Wedtech and Medley.

To Medley 004
in entirety to be
performed by them
005

Medley: Supplies to Wedtech:

90 P-1 modified modules
15 1 P-8 Ms - male connectors
21.1 P&C's female
15 P-8 F's

Value of the contract - one million.

This part in effect would be a subcontract by Medley for Wedtech.

21 Control Stations will also be given to Medley to subcontract

Value of the contract - $150,000

"A" frames and winches to Medley

12:25 P.M. Parties could not agree
so Joe Bennett, Aubrey Rogers and Bob Saldivar joined us in the meeting.

AGREEMENT REACHED:

List will be given to the SBA reciting a final agreement on the division of the contract.

Wedtech - 0001
Wedtech - 0002
Wedtech - 0003
Medley - 0004
Medley - 0005
Medley - 0006 - Flexors Medley
Wedtech - 0007

Wedtech - 0008 Wedtech - 0009 Wedtech - 0010 Wedtech - 0011 Wedtech - 0012	First article test done by East Coast company on its part of the contract Software requirements by Wedtech
Medley - 90 P1 modified 15 1P8 M 21 1P8C 15 1P8F	21 Control Station Box pilot house only 6 - A frames + 6 winches

1:30 P.M.

Glatz - Software contract selected by Joe Bennett

Preparation of Proposal

Glatz:	1.) will prepare proposal - gratis 2.) each company will state what they can do - and where they need outside assistance.
Moreno:	Wedtech - 1.) will take the lead in proposal preparation. 2.) Will pay Glatz for his contribution to proposal preparation.
Glatz:	1.) three subcontractors - in the contract with the Navy: Wedtech, Medley and Advanced Marine. 2.) Glatz insists he is a named subcontractor.
Glatz:	All engineering work not done by Wedtech or Medley should be done by firm.

U.S. SMALL BUSINESS ADMINISTRATION
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278

OFFICE OF THE DISTRICT DIRECTOR

Bert:
For your information
DAVE E

March 28, 1986

Wedtech Corporation
C/O Biaggi and Ehrlich
Attorney's at Law
299 Broadway
New York, N.Y. 10007

Re: Wedtech Corporation
Completion of 8(a)
Program Participation

Gentlemen:

This will acknowledge receipt of a letter dated March 27, 1986 from the Wedtech Corp. requesting Completion of their Participation in the Small Business Administration 8(a) Program.

In order to effectuate this request please be so kind as to:

(1) Have the enclosed five (5) Agreements executed by Mr. Mario Moreno as Vice Chairman of the Board of Directors. Return four copies of the Agreements to this office. Keep one copy for your records

(2) Provide this office with a copy of the Corporate resolution which authorizes the Wedtech Corporation to take this action, and also authorizes Mr. Mario Mareno as Vice Chairman of the Board to execute all necessary documents on behalf of the Wedtech Corp Said Corporate Resolution must be Certified by the Secretary to the Corporation and have the Corporate Seal affixed.

(3) All documents are to be sent to

Bert X. Haggerty
District Director, New York District Office
Small Business Administration
26 Federal Plaza
New York, N.Y. 10278

Upon receipt of the above documents we will arrange to have the execution completed by all appropriate SBA officals. A completed copy will thereafter be sent to you.

Very truly yours,

David Elbaum
District Counsel

JOHN GLENN, OHIO, CHAIRMAN

LAWTON CHILES, FLORIDA
SAM NUNN, GEORGIA
CARL LEVIN, MICHIGAN
JIM SASSER, TENNESSEE
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TED STEVENS, ALASKA

LINDA J. GUSTITUS, STAFF DIRECTOR AND CHIEF COUNSEL
MARY BERRY GERWIN, MINORITY STAFF DIRECTOR AND CHIEF COUNSEL

United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON
OVERSIGHT OF GOVERNMENT MANAGEMENT
WASHINGTON, DC 20510-6250

July 31, 1987

The Honorable James Abdnor
Administrator
Small Business Administration
1441 L Street, N.W.
Washington, D.C. 20416

Dear Jim:

The Senate Subcommittee on Oversight of Government Management is currently conducting a review of federal procurement under the Section 8(a) minority set-aside program, pursuant to our jurisdiction over government-wide procurement and management issues. As a part of this review, the Subcommittee is investigating the award of certain federal contracts to Wedtech Corporation, formerly known as Welbilt Electronic Die Corporation.

On September 9, 1987, we will commence hearings on procurement and management decisions of the Small Business Administration and other federal agencies with regard to Wedtech. To assist us in preparing for these hearings, we would appreciate your answering the following questions on or before August 25, 1987:

(1) How many 8(a) companies have received more than $50 million in 8(a) contracts?

a. Please list all such companies and the dollar value of the 8(a) contract support they have received.

b. Does the SBA have any policy limiting the amount of 8(a) contract support that may be received by any one 8(a) participant? If so, what is the policy?

(2) How many 8(a) companies have received an 8(a) contract with a dollar value of more than $10 million?

a. Please list all such companies and the dollar value of each contract in excess of $10 million that they have received.

b. For each contract listed in response to this request, please indicate whether the contract was for (a) construction; (b) manufacturing; (c) professional services; (d) concession; (e) non-professional services; or (f) other.

c. Does the SBA have any policy limiting the size of 8(a) contracts? If so, what is the policy?

(3) How many 8(a) companies have received Advance Payments with a total dollar value of more than $5 million?

a. Please list all such companies and the dollar value of the Advance Payments they have received.

b. Does the SBA have any policy limiting the dollar value of Advance Payments that may be received by any one 8(a) participant? If so, what is the policy?

(4) How many 8(a) companies have received Business Development Expense grants with a total dollar value of more than $1 million?

a. Please list all such companies and the dollar value of the BDE they have received.

b. Does the SBA have any policy limiting the dollar value of Business Development Expense that may be received by any one 8(a) participant? If so, what is the policy?

(5) How many 8(a) companies have had public stock offerings or issued publicly-traded stock?

a. Please list all such companies and state (i) the number of shares of stock held by the public; (ii) the number of shares of stock held by the designated minority owners; and (iii) the number of shares held by others.

b. For each such company, please state the current selling price of the stock and the amount of money raised by the company through public stock offerings.

c. Does the SBA have any policy relating to the participation of publicly-held corporations in the 8(a) program? If so, what is the policy?

(6) How many current 8(a) companies are owned by designated minority individuals with a reported a personal net worth of more than $500,000? How many such companies have participated in the 8(a) program since January 1, 1983?

a. Please list all such companies and the designated minority owners.

b. Does the SBA have any policy relating to the personal net worth of designated minority owners of 8(a) companies? If so, what is the policy?

c. Does the SBA conduct periodic reviews to determine whether 8(a) companies and their owners remain economically disadvantaged? If not, why not?

(7) Does the SBA have objective criteria for determining the appropriate length of a Fixed Program Participation Term (FPPT) or FPPT extension?

a. If so, what are the criteria?

b. Can an FPPT or FPPT extension be granted in excess of the length of time indicated by objective criteria? If so, under what circumstances?

c. How many 8(a) companies have received an FPPT in excess of the length of time indicated by objective criteria? How many companies have received FPPT extensions? Please list all such companies.

(8) How many current 8(a) companies that have been in the program for five or more years receive 80% or more of their contract dollars through the 8(a) program?

a. Please list all such companies and state the percentage of contract dollars that these companies receive through the 8(a) program.

b. Does the SBA have any policy on how to treat 8(a) companies that have become over-reliant on 8(a) contract support? If so, what is the policy?

(9) Should a company that has been in the 8(a) program for five years or more, has received 8(a) contracts with a dollar value in excess of $50 million, and receives 80% or more of its contract dollars through the 8(a) program receive a Fixed Program Participation Term extension? Does the SBA have any policy applicable to this issue? If so, what is the policy?

(10) Should a company that has been in the 8(a) program for five years or more, has received 8(a) contracts with a dollar value in excess of $50 million, and receives 80% or more of its contract dollars through the 8(a) program be a candidate for additional large 8(a) contracts? Does the SBA have any policy applicable to this issue? If so, what is the policy?

(11) Does the SBA require advance notification by 8(a) companies of any changes in ownership or control?

a. What are the possible sanctions for failure to notify the SBA of such changes in ownership or control?

b. Have such sanctions ever been exercised? If so, when?

(12) Does the SBA have any policy on whether temporary workers or workers employed by service companies count against size limitations applicable to participants in the 8(a) program? If so, what is the policy and how does the SBA enforce it?

(13) How many companies have been terminated from the 8(a) program for cause after a hearing on the merits?

a. Please identify all such companies and state the reason for the termination.

b. What is the average number of months that elapsed between an initial termination recommendation and a company's exit from the program?

c. Does the SBA permit a company to receive additional 8(a) contracts while a termination recommendation is pending against the company?

(14) If two or more 8(a) companies are interested in performing a contract that has been identified for the program and both companies are determined by the SBA to be capable of performing, what standards does the SBA apply in determining which company will get the contract? Does the SBA have any policy applicable to this issue? If so, what is the policy?

(15) Does the SBA currently have the statutory authority to require or permit competition among 8(a) participants for 8(a) contracts? What is the SBA's position on whether the introduction of competition into the 8(a) program is advisable?

Thank you for your assistance in this important matter. If you have any questions, please have your staff contact Peter Levine of the Subcommittee staff at 224-3682. We look forward to your answers.

Sincerely,

Carl Levin　　Bill Cohen

Carl Levin
Chairman

William S. Cohen
Ranking Minority Member

CL:WSC:pkl

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

AUG 25 1987

Honorable Carl Levin
Chairman
Committee on Governmental Affairs
United States Senate
Washington D.C. 20510

Dear Mr. Chairman:

This is in response to your letter of July 31, 1987 concerning your review of federal procurements under the Section 8(a) minority set-aside program. The following answers are in response to the questions posed in this letter.

1. The following 69 8(a) companies have received more than $50 million in 8(a) contracts

Region I

Input Output Computers
Grimes Oil
O'Sullivan's Fuel Oil
Yancy Minerals Inc.
Wardoco

Region II

Wallace & Wallace
Vanguard Oil & Svc. Co. Inc.
Tri Par Fuel Inc.
Ebony Oil Corp.
Wedtech Corp.
Amertex Ltd., Inc.
City Wide Security Service

Region III

Medley Tool & Model Co.
Systems Management American Corp.
Raven Data Processing
OAO Corporation
Systems & Applied Sciences
Automated Science Group
Unified Industries
G&M Oil Company
Technology Applications Inc.
Sterling Systems
Systems Requirements & Svs.Assoc.
RMS Technologies Inc.
United Chem-Con Corp.
Comuter Dymanics Inc.
Southeast Machine Co.
Jackson Oil Company
Engineering & Economic Research
International Business Machine

Region IV

Fuller Oil Company
The Polote Corp.
New Technology Inc.
American Development Corp.
Colsa Inc.

Region V

Wm Cargile Contractor Inc.
Abbott Products Inc.
Universal Energy Systems Inc.
Thacker Construction Co.
L.H. Smith Oil Corp.
Sonicraft Inc.
Bryant Electric Co. Inc.

Region VI

None

Region VII

Lewis Management & Svc. Inc.
PECO Enterprises Inc.
HLJ Management Group Inc.

Region VIII

A&S Tribal Industries
Devils Lake Sioux Mfg. Corp.
Computer Technology Assoc.
Turtle Mt. Manufacturing Co.

Region IX

Del Manufacturing Co.
Univox California Inc.
Smith Engineering & Contract Svc.
Inter Con Security, Inc.
Arral Industries Inc.
Computer Software Analysts Inc.
AVW Electronic Systems Inc.
Teleport Oil Co. Inc.
Amex Systems, Inc.
Technology Development of California Inc.
Superior Engineering & Electronics Co. Inc.
Maya Construction
Arcata Associates Inc.
Bay City Marine Inc.
Triad Microsystems Inc.
Infotec Development Inc.
Applied Technology Assoc.

Region X

Nero & Associates, Inc.
Professional Maintenance Co.
3A Industries Inc.

1(a). See attachment 1 for a listing of contract support received by each of the companies named in 1 above.

1(b). Yes, SBA policy requires that each 8(a) firm is assigned an annual 8(a) support level expressed in dollars for each federal fiscal year the firm participates in the 8(a) program. A firm may receive 8(a) awards valued at not more than 125% of the assigned annual 8(a) support level. These annual support levels may be revised by SBA during the current year if such revision is for good cause and is beneficial to the 8(a) firm requesting such revision.

2. The following 116 8(a) companies have received an 8(a) contract with a dollar value of more than $10 million.

Region I

Input Output Computers
Grimes Oil
O'Sullivan's Fuel Oil
Yancy Minerals Inc.
Wardoco

Region II

Logical Technical Svcs. Corp.
Wallace & Wallace
Vanguard Oil & Svc. Co. Inc.
Tri Par Fuel Inc.
Ebony Oil Corp.
Wedtech Corp.
American Overseas Co.
H.F. Henderson Industries
Amertex Ltd., Inc.
Edcar Industries
Systematic Management Svc. Inc.
Glopak Corporation

Region III

Medley Tool & Model Co.
Dynamic Data Processing
Systems Management American Corp.
Raven Data Processing
OAO Corporation
Systems & Applied Sciences
Automated Science Group
Carob Contractors Inc.
Unified Industries
G&M Oil Company
National Business Svcs. Enter.
Analysis Group Inc.
Technology Applications Inc.
Aurora Associates
Fort Myer Construction Corp.
Sterling Systems
Comprehensive Marketing Systems
Network Solutions
Integrated systems Analysts
Systems Requirements & Svs.Assoc.
RMS Technologies Inc.
United Chem-Con Corp.
Comuter Dymanics Inc.
A&B Contract Svcs. Co.
Southeast Machine Co.
Jackson Oil Company
Techdyn Systems Corp.
Carmatek Corp.

Region IV

Pope Maintenance Corp.
Pryor Enterprises
Fuller Oil Company
The Polote Corp.
Shaw Food Services Co.
Wrights Auto Repair
Ver-val Enterprises Inc.
The EC Corporation
Stevens Fuel Oil
New Technology Inc.
United Schools of America Inc.
American Development Corp.
Colsa Inc.
Balimoy Mfg. Co. of Venice
TAM Inc.

(4)

Region V

Wm Cargile Contractor Inc.
Abbott Products Inc.
Colejon Mechanical Corp.
Universal Energy Systems Inc.
General Railroad Equipment
  & Service Co.
Enginetics Corp.
Kinross Manufacturing Corp.
Maecorp Inc.
Thacker Construction Co.
L.H. Smith Oil Corp.
Sonicraft Inc.

Region VI

Aleman Food Service
Cantu Services
Universal Canvas Inc.
Cortez III Service Corp.
JR Son Oil Co.
Laguna Industries

Region VII

Groves Contract Service Inc.
Lewis Management & Svc. Inc.
PECO Enterprises Inc.
HLJ Management Group Inc.

Region VIII

Alvarado Construction Co.
Roberts Construction Co.
A&S Tribal Industries
Devils Lake Sioux Mfg. Corp.
Computer Technology Assoc.
Turtle Mt. Manufacturing Co.
Great Southwestern Const. Inc.
G.V. Contracting

Region IX

Del Manufacturing Co.
Univox California Inc.
Smith Engineering & Contract Svc.
Inter Con Security, Inc.
Omni Plan Corp.
Arral Industries Inc.
Computer Software Analysts Inc.
Cardinal Management Assoc. Inc.
AVW Electronic Systems Inc.
EDP Enterprises, Inc.
Teleport Oil Co. Inc.
Amex Systems, Inc.
Technology Development of
  California Inc.
Superior Engineering &
  Electronics Co. Inc.
Maya Construction
Arcata Associates Inc.
Super Mex Inc.
Bay City Marine Inc.
Triad Microsystems Inc.
Pacifica Services Inc.
Infotec Development Inc.
Applied Technology Assoc.
New Bedford Panoramex Corp.
Solo Enterprises Corp.

Region X

Nero & Associates, Inc.
Professional Maintenance Co.
3A Industries Inc.

2(a). See attachment 2 for a listing of contracts received by each of the companies named in 2 above.

2(b). See attachment 2 for the Standard Industrial Code (SIC) for each contract award.

2(c). SBA does not have a policy limiting the size of an 8(a) contract that may be awarded to an 8(a) concern. Size of contract is only limited by the ability of the 8(a) contractor to satisfactorily perform at a particular dollar level.

3. The following 19 8(a) companies have received advance payments with a total dollar value of more than $5 million.

Region I

Input Output Computer Svc. Inc.
Grimes Oil
O'Sullivan Fuel & Oil Inc.

Region II

Wallace & Wallace Fuel Oil Inc.
Vanguard Oil & Svc. Co. Inc.
Tri Par Fuel Inc.
Ebony Oil Corp.
Wedtech Corporation

Region III

Baltimore Electronics Assoc.
Jackson Oil Compnay
G&M Oil Company Inc.
Chen Printing

Region IV

Eutaw Apparel Corp.

Region V

Sonicraft Inc.
L.H. Smith Oil Corp.

Region VI

Garland Foods Inc.
JR Son Oil Company
Leal Petroleum Corp.

Region VII

None

Region VIII

None

Region IX

Univox of California Inc.

Region X

None

3(a). See attachment 3 for a listing of total advance payments received by each of the companies named in 3 above.

3(b). SBA does not have a policy limiting the dollar value of advance payments that may be received by any one 8(a) participant. However, consistent with the Federal Aquisition Regulations, no one contractor may be advanced more than 90% of a single contract.

4. The following 22 8(a) companies have received business development expense funds with a total value of more than $1 million.

Region I

P.F. Industries Inc.

Region II

Wallace & Wallace Fuel Oil Co.
Vanguard Oil & Svcs. Co. Inc.
Tri Par Fuels Inc.
Ebony Oil Corp.
Wedtech Corporation
Amertex Enterprises Ltd. Inc.

Region III

JWM Corporation
Security Meat Industries
Norman Hodges Associates

Region IV

Terry Manufacturing Co. Inc.

Region V

Sonicraft Inc.
Thacker Construction Co.
L.H. Smith Oil Corporation
General Railroad Equipment & Services Inc.

Region VI

Garland Foods Inc.
Universal Canvas Inc.

Region VII

None

Region VIII

Devils Lake Sioux Mfg. Corp.
A&S Tribal Industries

Region IX

Watts Manufacturing Corp.
Univox of California Inc.
Golden Oak Inc.

Region X

None

4(a). See attachment 4 for a listing of dollar value of BDE received by each of the companies named in 4 above.

4(b). SBA does not have a policy limiting the dollar value of Business Development Expense that may be received by any one 8(a) participant. BDE is made available based on the business development needs of individual companies.

5. The following 2 8(a) companies have had public stock offerings or issued publicly-traded stock.

Scientific Systems, Inc.
General Science Corp.

5(a). See attachment 5 for a listing of the stock distribution.

5(b). See attachment 5 for a listing of the selling price and money raised.

5(c) SBA's policy relating to the participation of publicly-held corporation in the 8(a) program is that an 8(a) firm may go public provided disadvantaged owner(s) retain 51% ownership and control of the firm. See Attachment 6 13 CFR 124.103(c)(1-5)(9d).

6. Currently there are 193 8(a) companies which are owned by designated minority individuals with a reported personal net worth of more than $500,000.

6(a). See attachment 7 for listing of companies and designated minority owners.

6(b). Personal net worth is one of the criteria considered in determining the economic disadvantage of individual applicants. See Attachment 6 13 CFR Part 124.106(b)(1).

6(c). Yes, periodic reviews to determine whether 8(a) companies and their owners remain economically disadvantaged are made.

7. Yes, SBA does have objective criteria for determining the appropriate length of a Fixed Program Participation Term or FPPT extension.

7(a). See attachment 8 (SOP 80 05 1, page 57(g)(1)-(7) and page 78(k) page 87 (part). For FPPT extension purposes see page 96 (14a) through page 106.

7(b). No, an FPPT or FPPT extension cannot be granted in excess of the length of time indicated by objective criteria.

7(c). No companies have received an FPPT extension is excess of the length of time indicated by objective criteria. Currently there have been 697 companies that have received FPPT extensions. Please see attachment 9 for listing of such companies. Contractors in the final phase of their FPPTs are designated by either a single asterik (*), double asterik (**) or double xx's (xx).

(8)

8. This information is unavailable as of this date. It will be forwarded to you as soon as it becomes available within the next week.

8(a). This information is unavailable as of this date. It will be forwarded to you as soon as it becomes available within the next week.

8(b) SBA's policy is to require companies to operate within their 8(a) support projections. Support projections differ from company to company.

9. Fixed Program Participation Term extensions are based on the criteria stated in number 7 above. These determinations are made on a case by case basis. The decision to extend or not to extend would not be made solely on the dollar value of contracts received or the ratio of 8(a) sales to non 8(a) sales.

10. The principal objective of the 8(a) program is to assist participating firms toward competitiveness in the marketplace. Over-reliance on 8(a) contract awards is considered more relevant to achieving this objective than the value of 8(a) contracts. SBA recognizes that these two variables are related; however, we recognize also that the difference in industries and industry segments must also be taken into account. If a firm is more than 50% dependent on 8(a) contracts, SBA would give serious consideration to how such dependency will affect the firm after graduation before permitting such award.

11. Yes, SBA does require advance notification by 8(a) companies of any changes in ownership or control.

11(a). Failure to notify the SBA of changes in ownership or control can result in termination from the 8(a) program.

11(b). No such sanctions have ever been exercised.

12. SBA's policy concerning temporary workers and part year workers are as outlined in 13 CFR 121.2. This policy is the same for all small businesses 8(a) and non 8(a). Briefly the policy requires that part time workers count against size standards in the same manner as full time workers. Part year workers are counted based on the fraction of the pay period they work.

13. In an August 10, 1987 memorandum the Acting Associate Administrator of the Office of Hearings & Appeals, stated that no 8(a) companies have been terminated from the 8(a) program for cause after a hearing on the merits. However, the OGC lists twelve 8(a) firms that had hearings before administrative law judges between June 1981 and May 1982. These hearings were not necessarily held in Washington, D.C. therefore, the Office of Hearings & Appeals may not have had record of them.

13(a). See Attachment 10 for a listing of companies and reason for termination.

13(b). This information is only available through a detail review of each termination case file, most of which have been retired to the Federal Records Center. Such a review would take several months. If the time required to make this review fits within your time frame, we will make this review upon further request from you.

13(c). Yes, SBA does permit a company to receive additional 8(a) contracts while a termination recommendation is pending against the company provided the 8(a) firm has not been debarred or suspended from receiving 8(a) contracts.

14. When SBA must select an 8(a) concern from among more than one firm determined by SBA to be capable of performing the offered requirement, SBA policy requires that twelve factors be considered by SBA in making its selection of the 8(a) firm to which the offered requirement will be matched. The twelve factors are designed to consider each firm's technical capability, financial capacity, need for the contract to achieve its business plan objectives and other factors relating to contract performance, and overall business development aspects for which the firm received 8(a) approval.

15. P.L. 95-507 does not expressly prohibit competition in the 8(a) program. It has, however, been Congress' intent, based on the legislative history of P.L. 95-507 and other language in the law, that 8(a) contracts be awarded on a non competitive basis. SBA has permitted the use of technical evaluations of several 8(a) firms but we have stopped short of permitting competition based on price in keeping with the intent of Congress as referred to above. How to use price competition in the 8(a) program is a most difficult issue to deal with due to the inherent contradiction in terms. On the one hand, the program was established by Congress to assist those firms not yet able to compete in the unsheltered marketplace. On the other hand, you have the question "should competition be used in the 8(a) program?" Logic would suggest that while 8() firms may be able to compete against each other such competition has no practical value to the 8(a) firm, when competing in the open (unsheltered) market. There is also the added disadvantage, related to the inability to meet business plan targets, that if 8(a) awards were made competitively such competitive procurement does not allow the degree of control over the allocation of contracts that the current 8(a) program provides.

SBA has taken this matter under advisement and did attempt to test 8(a) competition with the Department of Navy. Navy, however, has chosen to devote its attention to utilizing the Small Disadvantaged Business set-aside program authorized by P.L. 96-661.

I sincerely hope that the above responses will help to answer some of the questions you have concerning the operations of our Minority Small Business Program.

Sincerely,

James Abdnor

James Abdnor
Administrator

Attachments

Post-Hearing Questions for Jim Sanders

1. Did Lyn Nofziger or Mark Bragg ever contact you about Wedtech after September 1982? If so, when, and what was discussed?

2. Did anybody else at the SBA ever tell you that they had spoken to Lyn Nofziger or Mark Bragg about the Navy pontoon contract? If so, who was the SBA official, and what were the circumstances of the discussion with Nofziger or Bragg?

3. Did you ever speak to anybody at the White House or with Congress about the Navy pontoon contract that was ultimately awarded to Wedtech? If so, with whom did you speak, when, and what was discussed?

4. Did anybody else at the SBA ever tell you that they had spoken to somebody at the White House or with Congress about the Navy pontoon contract that was ultimately awarded to Wedtech? If so, who was the SBA official, and with whom did he or she speak?

5. Did Mr. Pyatt ever tell you that he had spoken to anybody at the White House or with Congress about the pontoon contract? Did he ever tell you that he had spoken to Mr. Nofziger or Mr. Bragg about that contract? If so, what did Mr. Pyatt say about these conversations?

6. Did anybody else at the Navy ever tell you that he or she had spoken to Mr. Nofziger, Mr. Bragg, or somebody from the White House or Congress? If so, who was the individual at the Navy and with whom did he speak? What did he or she say about these conversations?

7. Who at the SBA told you that Wedtech was the only company capable of performing the pontoon contract?

BEER
INSTITUTE

James C. Sanders
President

September 22, 1987

The Honorable Carl Levin
Chairman
United States Senate Committee on
Governmental Affairs
Subcommittee on Oversight of
Government Management
Washington, DC 20510-6250

Dear Senator Levin:

I have attached my response to your post-hearing questions. Please don't hesitate to contact me if I can be of any further assistance in this matter.

Sincerely,

James C. Sanders

JCS/ml
Attachment

1750 K Street, N.W. Washington, D.C. 20006 (202) 466-2400

ANSWERS TO POST-HEARING QUESTIONS
POSED BY SENATOR CARL LEVIN

1. I do not recall any contacts from Nofziger or Bragg about Wedtech after September, 1982, but on the other hand, it would have been normal to hear from a representative of any large 8(a) firm if a large contract was made available to the 8(a) program.

2. I do not recall anyone else telling me they had spoken to Nofziger or Bragg about the Navy pontoon contract.

3. I do not recall anyone at the White House speaking to me about the pontoon contract. Insofar as Congress is concerned, I do not recall any specific conversations with a congressman or a member of his staff, but it would not be unusual for a congressman or a member of his staff to inquire about possibilities for an 8(a) firm in his district obtaining any specific contract.

4. I do not recall anyone at the SBA telling me they had spoken to somebody at the White House about the Navy pontoon contract. Although I don't recall any specific conversation, I am sure various people at SBA were contacted by various congressional people who were promoting firms in their congressional districts hopeful of obtaining a pontoon contract.

5. As I recall, the conversations Mr. Pyatt and I had concerning the pontoon contract were focused on whether the Navy was going to use the 8(a) program or not. I don't recall Pyatt referring to any conversations with the White House, Congress, Nofziger or Bragg.

6. I do not recall anyone else at Navy telling me he or she had spoken to Nofziger, Bragg, the White House or Congress.

7. The selection process for the most eligible 8(a) firm for any given contract was the result of recommendations by the MSB people at the district, region and national offices. As far as I, the Administrator, was concerned, the MSB office gave me the resultant conclusion that there was only one firm in the 8(a) program who was even close to being qualified for the job and that was Wedtech.

Post-Hearing Questions for Bob Webber

1. On September 22, 1983, the SBA issued a "bridge letter" to Wedtech, giving the company a temporary extension of its Fixed Program Participation Term during a period, after the company's public stock offering, when it acknowledged that it was not minority-owned and controlled. The SBA's Standard Operating Procedures now state that such "bridge letters" are "strictly prohibited."

On what basis did the SBA prohibit the issuance of "bridge letters"? In your view, was it appropriate for the SBA to issue a "bridge letter" to Wedtech at a time when it acknowledged that it no longer met 8(a) eligibility requirements? Why or why not?

2. You testified that "the [8(a)] statute does provide for a public offering." In fact, Section 8(a) does not make any reference to "public offerings."

Section 8(a)(4) extends eligibility to small businesses that are "at least 51% owned by . . . socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51% of the stock of which is owned by [such individuals]." The SBA's currently effective regulations interpret this language as follows:

> (a) In the case of an applicant concern which is a partnership, 51% of the partnership interest must be owned . . .
>
> (b) In the case of an applicant concern which is a corporation, 51% of all classes of voting stock must be owned . . .

In other words, the SBA's new regulations appear to interpret "publicly owned business" to mean "corporation" - not a company that has held a "public stock offering."

Do you believe that Section 8(a)(4) contemplates 8(a) participation by companies that have completed public stock offerings? Is this the SBA's official position?

3. You testified that the SBA had received "direction . . . from Congress . . . that there should be large businesses in [the 8(a)] program that are not necessarily . . . disadvantaged." Section 8(a), however, authorizes the SBA to

subcontract procurements only "to socially and economically disadvantaged small business concerns."

Where do you find the statutory directive, or authority, for the SBA to subcontract procurements to "large businesses" or businesses that are not economically disadvantaged?

4. Why were there no copies of your Wedtech opinion memorandum and supporting documentation in your personal chron file? Who, other than you, has access to that file?

5. Since becoming the SBA general counsel, have you ever been to the White House? If so, on approximately how many occasions, and to discuss what issues? Did you ever discuss Wedtech with anybody at the White House? If so, when and with whom?

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OCT 9 1987

Honorable Carl Levin
Chairman
Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your follow-up questions relating to my testimony before the Senate Subcommittee on Oversight of Government Management on September 10, 1987.

1.a. "On what basis did the SBA prohibit the issuance of 'bridge letters'?"

In the past, the SBA permitted certain 8(a) firms which timely requested extensions to their initial Fixed Program Participation Terms (FPPTs) to continue participation in the 8(a) program pending the outcome of their extension decisions where the SBA had been unable to process the firm's request for an extension prior to the expiration of the firm's initial FPPT. Where the SBA believed that an 8(a) firm would receive an extension to its FPPT when the extension decision was finally made, the firm would receive a letter from the SBA authorizing it to continue to participate in the 8(a) program pending the extension decision. The issuance of these "bridge letters" was a practice that occurred when SBA field offices began to experience substantial backlogs of FPPT extension requests and developed within the 8(a) program without the benefit of careful legal analysis.

The Agency began to realize that the existence of "bridge letters" was part of the problem of a continuing backlog of FPPT extension requests. SBA field offices started to rely on the availability of "bridge letters" instead of expediting the process of deciding extension requests. Moreover, the SBA felt that "bridge letters" were of questionable legality since a "bridge letter" in effect extended an 8(a) firm's participation in the 8(a) program past the expiration date of its initial FPPT, but did so without the appropriate evaluation of criteria needed to grant an extension. The SBA believed that it could have been vulnerable legally to challenges brought by 8(a) firms or other small businesses which were denied a Federal procurement requirement because the requirement was awarded to an 8(a) firm solely on the authority of a "bridge letter."

Consequently, because of this concern of legal vulnerability and the programmatic concern that "bridge letters" were perpetuating the backlog of extension requests awaiting decision, the Agency decided to prohibit the further issuance of "bridge letters" in SBA Notice No. 8000-71, effective April 23, 1986 (Attachment 1). This prohibition is now contained in ¶ 14m of SBA SOP 80 05 1 (Attachment 2).

b. "In your view, was it appropriate for the SBA to issue a 'bridge letter' to Wedtech at a time when it acknowledged that it no longer met 8(a) eligibility requirements? Why or why not?"

As I stated in my prepared testimony before the Subcommittee, on January 30, 1984, I issued an opinion finding that, after its stock restructuring, Wedtech continued to meet the eligibility requirements of the Small Business Act and its implementing regulations. SBA did not acknowledge that Wedtech no longer met the 8(a) eligibility requirements at the time that Wedtech was issued a "bridge letter."

I have no knowledge as to whether Wedtech itself acknowledged that it no longer met the 8(a) eligibility requirements. Assuming that it had acknowledged its failure to continue to meet eligibility requirements, the SBA should not have issued a "bridge letter" to Wedtech. As I have stated above, "bridge letters" were to be utilized only where the SBA believed that an 8(a) firm would receive an extension to its FPPT when the extension decision was finally made. If Wedtech was no longer eligible to participate in the 8(a) program, it was not eligible to receive an extension to its initial FPPT and, therefore, should not have received a "bridge letter."

In the absence of an acknowledgement by Wedtech that it was no longer eligible for 8(a) participation, or such a determination by SBA, the issuance of a "bridge letter" to Wedtech was entirely consistent with the policies in effect at that time.

2. "Do you believe that Section 8(a)(4) [of the Small Business Act] contemplates 8(a) participation by companies that have completed public stock offerings? Is this the SBA's official position?"

As you note in your post-hearing questions, "Section 8(a)(4) extends eligibility to small businesses that are 'at least 51% owned by . . . socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51% of the stock of which is owned by [such individuals].'" You then infer that SBA's regulations interpret the phrase "publicly owned business" to mean "corporation" and not a company that has held a "public stock offering." The regulation that you cite, 13 C.F.R. § 124.103(b), simply requires that each class of stock of any applicant concern which is a corporation must be 51% owned by disadvantaged individuals. It pertains to all corporations, whether privately or publicly owned, and does not mean to imply that publicly owned corporations are ineligible for 8(a) participation. I believe that an interpretation that would exclude publicly owned corporations from participation in the 8(a) program would be contrary to the plain meaning of § 8(a)(4) and would be unenforceable in court.

Since the Small Business Act (the Act) permits the eligibility of an applicant concern which is "publicly owned," it necessarily follows that the Act contemplates admitting to the 8(a) program firms which have held public stock offerings. It makes no sense that a firm which has already held a public offering may be admitted to the 8(a) program while a firm which has been admitted to the program cannot go public once in the program. I believe that the imposition of such a prohibition would be arbitrary.

Personally, I believe that any applicant concern which has held a public stock offering or any 8(a) firm which is in the position to be able to hold a public stock offering should be deemed to have overcome its economic disadvantage. However, the express language of the Act dictates otherwise.

The official position of the Agency, based on the current statutory language, is that 8(a) firms can hold public offerings under appropriate conditions.

3. "Where do you find the statutory directive, or authority, for the SBA to subcontract procurements to 'large businesses' or businesses that are not economically disadvantaged?"

I, of course, recognize that only small disadvantaged businesses are authorized to receive 8(a) subcontracts under the Act. When I stated in my testimony that "there should be large businesses in [the 8(a)] program that are not necessarily looked at as disadvantaged," I did not mean that firms which exceed SBA size standards may, or should, participate in the 8(a) program. I was referring to those firms participating in the 8(a) program that fall just within a particular size standard, particularly size standards measured by number of employees. Such firms are "large" in comparison to newly admitted 8(a) firms and, because of their size, may be looked at by some people to have overcome their economic disadvantage. I believe that Congress intended such firms to continue to participate in the program despite what could be a dramatic increase in size due to their participation in the program.

4. "Why were there no copies of your Wedtech opinion memorandum and supporting documentation in your personal chron file? Who, other than you, has access to that file?"

Only those opinions, memoranda, letters, etc. that I personally write are included within my chron file. I do not include every opinion that I sign or clear off on. In addition, I do not include supporting documentation within my chron file. Such information is included within the opinion files of the Office of General Counsel. To do otherwise would duplicate much of the filing system of the Office of General Counsel.

The Wedtech opinion at issue here was not authored by me. As such, I did not put a copy of it in my chron file.

There is no explanation as to why the supporting documentation to this opinion cannot be found in the opinion files of the office where the opinion originated. My staff has carefully searched these files and cannot find such materials. Access to the opinion files is open to any employee in the Office of General Counsel.

5. "Since becoming the SBA general counsel, have you ever been to the White House? If so, on approximately how many occasions, and to discuss what issues? Did you ever discuss Wedtech with anybody at the White House? If so, when and with whom?"

Since becoming the General Counsel of the SBA, I have been to the White House on one occasion to discuss a matter concerning the SBA. I went to the White House to discuss the implementation of a court decision ruling that 8(a) concerns must be small at the time of contract award in addition to being small at the time of program entry.

I did not discuss the Wedtech situation with anyone at the White House.

I trust that I have answered your inquiries to your satisfaction. I would be happy to provide any further information to you that you request.

Sincerely,

Robert B. Webber
General Counsel

SBA NOTICE

TO: Central Office Management Board
Regional Administrators
District Directors, and
Branch Managers

NOTICE NO. 8000-71

EFFECTIVE 4/23/86

SUBJECT: Processing of Fixed Program Participation Term (FPPT) Extension Requests (Relates to SOP 80 05)

FPPT Extension Request Form

It has come to our attention that there are an inordinate amount of "Bridge Letters" being issued to 8(a) firms who have otherwise filed timely requests for extensions of their FPPT.

It is our view that this practice is unacceptable since we feel 12 months gives ample time to process these requests.

Accordingly through this notice, be advised of the following:

(1) The issuance of bridge letters to 8(a) contractors who have requested timely extensions to their FPPT's is to be discontinued 60 days after the issuance date of this notice. (This period of time will allow you the opportunity to process FPPT extension requests expiring within the 60 day period or to issue Bridge letters if the extension cannot be processed.)

(2) In order to allow you to concentrate your efforts on processing FPPT extensions within the prescribed 12 months period, we are requesting that you forward to C.O. the files of 8(a) contractors who have formally and legitimately requested FPPT extensions and are currently participating in the program under bridge letters due to FPPT expirations. Extension requests and evaluation files for said "bridge letter contractors" are to be forwarded to the Office of the AA/MSB&COD immediately.

To insure processing of FPPT requests within the alloted 12 month period, I am requesting strict adherence to SOP criteria governing such requests. Specifically, procedures outlined in Section 108.1 a-d of Chapter 11 in SOP 80-05.

These procedures require, in part, that within 5 working days of receipt of an extension request, a BDS shall make a determination as to the timeliness of the request.

If the request is deemed to be timely, the BDS shall immediately (henceforth within the five working days of receipt of the request) forward by certified mail, return receipt requested, to the firm complete instructions for providing the documentation to support the firm's request.

EXPIRES 10/1/86

Attachment 1

The firm will be advised to complete all forms and supporting documentation and return the completed material within 30 days because failure to do so may result in denial of the extension request.

The return documents from the applicant concern should be reviewed and a decision on the extension should be made within 45 working days. If the request cannot be processed and a decision made within this 45 day period, the request along with completed "Evaluation Factors for Fixed PRogram Participation Term Extensions" (Appendices 51 - 55) shall be immediately forwarded to C.O. for processing.

Wilfredo J. Gonzalez
Associate Administrator for
Minority Small Business &
Capital Ownership Development

requirements of section 8(a) (9) of the Small Business Act (15 U.S.C. 637(a) (9)), or any of SBA's implementing rules and regulations." [13 C.F.R. §124.110(j)].

m. Bridge Letters Prohibited

SBA may not authorize an 8(a) concern to continue to participate in the 8(a) program at the expiration of its FPPT if its extension request has not yet been processed. "Bridge letters" authorizing such continuation pending extension approval are strictly prohibited.

n. FPPT Corrections

Notwithstanding any other provision of law, where an error of the magnitude of four or greater in a financial ratio is made in the evaluation of an application for extension made by any firm in accordance with C.F.R. Section 124.1-(1)(f)(4)(i) (effective January 1, 1986); the maximum extension shall be granted.

Attachment 2

Post-Hearing Questions for Aubrey Rogers

1. You testified that you knew that "Wedtech had not done pontoons before, that there were other firms that had been closer to that kind of business and that they too were being considered."

In light of this testimony, were you surprised that Wedtech was selected? In your view, was Wedtech the only candidate for the contract that was capable of performing? If not, why was Wedtech selected?

2. You testified that Wedtech's eligibility after the public stock offering "was discussed in the central office eventually."

By whom? When? What conclusions were reached? How are you aware of this?

3. You testified that you met with SBA Regional Administrator Peter Neglia and SBA District Counsel David Elbaum in December 1983 to discuss Wedtech. You further testified that in the course of one of these meetings, Mr. Elbaum stated that he could not rely upon an opinion memorandum supplied by Biaggi & Ehrlich because (1) Biaggi & Ehrlich was Wedtech's firm; and (2) Biaggi & Ehrlich owned stock in Wedtech.

Mr. Elbaum testified that he does not recall any meetings with you and Mr. Neglia in December to discuss Wedtech. He flatly denied that he ever stated that he could not rely upon a Biaggi & Ehrlich memorandum. Enclosed is a copy of the relevant pages of Mr. Elbaum's testimony.

In light of Mr. Elbaum's testimony, do you still believe that a meeting took place in December at which Mr. Elbaum stated that he could not rely upon an opinion memorandum supplied by Biaggi & Ehrlich?

U. S. SMALL BUSINESS ADMINISTRATION - REGION II
26 FEDERAL PLAZA
NEW YORK NEW YORK 10278

OFFICE OF THE REGIONAL ADMINISTRATOR

October 15, 1987

Senator Carl Levin, Chairman
Subcommittee on Oversight of
 Government Management
United States Senate
Washington, D.C. 20510-6250

Dear Chairman Levin:

I apologize for the delay in responding to your letter of September 17, 1987 regarding the Wedtech Corporation.

I am pleased to supply the following information:

Question 1

In light of this...if not, why was Wedtech selected?

Response:

A. No, I was not surprised. The Navy narrowed its criteria to require a firm from the east coast that was near to a major waterway. Wedtech met these criteria. The firm also had adequate financial strength to carry out the project and to acquire whatever technical ability it lacked.

B. No. Medley Tool of Philadelphia also met the criteria but, overall, was less qualified than Wedtech.

C. In my opinion, Wedtech was selected because the Small Business Administration and the Navy felt that the firm was stronger than Medley Tool.

Question 2

You testified that Wedtech's eligibility..."was discussed in the Central Office eventually."

Response

A. I discussed the issue with General Counsel Robert Webber in January, 1984.

I also assume that staff in the Minority Small Business Division discussed the issue prior to their approving the FPPT extension.

B. General Counsel Robert Webber was skeptical about the matter and voiced concern about keeping a firm in the 8(a) program whose owners were multi-millionaires. He said that he would study the issue.

Question 3

You testified that you met...supplied by Biaggi and Ehrlich?

Response

A. It is my recollection that a meeting with Mr. Elbaum and Mr. Neglia took place in late December, 1983 at which Mr. Elbaum made that statement.

I am available to answer any additional questions that you or other members of the Committee may have.

Sincerely,

Aubrey A. Rogers
Deputy Regional Administrator

AR/ab
2727R

Post-Hearing Questions for Edric Rose

1. You testified that you could not remember whether the SBA had received Wedtech's stock purchase agreements prior to January 4, 1984. You stated that you would have to go back to Wedtech's earlier submissions to make that determination.

Enclosed are copies of three Wedtech submissions, dated December 12, 1983, December 20, 1983, and December 22, 1983. The first two Wedtech memoranda discuss only economic disadvantage, and do not mention the issue of minority ownership. The third letter asserts that Mariotta has purchased additional stock, and states that Wedtech "would clearly submit substantial evidence" of this transfer if so required by the SBA. On December 27, 1983, Mr. Neglia wrote a letter to Wedtech, in which he requested copies of the stock purchase agreements.

In light of these documents, had you seen Wedtech's stock purchase agreements and escrow agreements prior to January 4, 1984? If so, who transmitted them to you and when?

2. You testified that you relied upon published information from Dun & Bradstreet and Robert Morris Associates in making your determination that Wedtech's engine competitors were all Fortune 500 companies.

Do Dun & Bradstreet and Robert Morris Associates publish data on which companies compete for which products? If so, what are these reports and where are they available?

In making this statement, were you referring to information on the size of certain defense contracting companies that was reproduced in the Appendices of Wedtech's December 12, 1983 submission? If so, on what basis did you conclude that these companies actually produced engines, or competed with Wedtech?

3. David Elbaum, the former District Counsel for the New York SBA, testified that he directed his January 5, 1984 opinion letter on the validity of Wedtech's stock transaction to you because he had been called into the office of Mr. Neglia and directed to do so. He further testified that Mr. Neglia told him that "time was of the essence because there was a conference of some kind in Washington with regard to a contract that was to be awarded to Wedtech."

Were you aware that Mr. Neglia had directed Mr. Elbaum to send his opinion letter directly to you? Were you aware that the matter was viewed as urgent because a contract was about to be awarded to Wedtech? Do you know whether the contract at issue was the pontoon contract?

U. S. SMALL BUSINESS ADMINISTRATION - REGION II

26 FEDERAL PLAZA
NEW YORK NEW YORK 10278

OFFICE OF THE REGIONAL ADMINISTRATOR

September 25, 1987

Honorable Carl Levin, Chairman
United States Senate
Committee on Governmental Affairs
Subcommittee on Oversight of Government Management
Washington, D.C. 20510-6250

Dear Senator Levin:

This refers to your letter dated September 17, 1987 with questions relating to my testimony on the Wedtech Corporation inquiry.

The following is my response to those questions:

In response to your question one (1), the answer is that while information was previously provided SBA concerning the actions taken to cause John Mariotta to have majority ownership in Wedtech Corp., I do not recall seeing the actual stock purchase agreement and escrow agreements prior to January 4, 1984.

With respect to your question two (2) paragraph two (2), the answer is that I do not know that either Dun and Bradstreet or Robert Morris Associates publish data on firms which compete for specific products.

Paragraph three (3) of question two (2) asks for the basis on which I concluded that the firms listed in the Wedtech submission of December 12, 1983 actually produced engines.

The answer is that in consideration of the condition of Wedtech Corporation and of its status with respect to other firms which produced items similar to those manufactured by the company, I did not confine my review to the engine contract only. I had to consider the overall activity of the firm and this included the manufacture of Suspension Kits for tanks, Grenade Launchers, and many other items. I did also consider the pending Pontoon requirement. The Comparative Historical data collected by Dun & Bradstreet and Robert Morris Associates is used by SBA and others to make judgments as to how well a firm in a particular industry is doing, by comparing its financial averages with those of similar firms. The data in the studies is usually divided into categories based on the dollar volume of business done each year. One selects the category closest to that of the firm being studied, examining and comparing the ratios. From what I remember, ratios compared very unfavorably with those in the studies which could be matched.

My job was to make a judgment as to whether or not the firm could be considered as having overcome its economic disadvantage and whether it was able to access the capital and credit necessary to successfully compete in the market place. All the information available at the time led me to the conclusion that it had not overcome its economic disadvantaged status since there were serious financial problems and one could not predict how well the stock issue would go.

Question three (3) concerns the testimony of David Elbaum. I was not aware of the instructions given to Mr. Elbaum by Mr. Neglia with respect to this action. I was not aware that the urgency here was due to the Pontoon contract negotiation.

Sincerely,

Edric C. Rose
Assistant Regional Administrator
for Minority Small Business-COD